

Report on the

State of Alabama Massage Therapy Board

Montgomery, Alabama



Department of Examiners of Public Accounts

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June 20, 2007

Senator Larry Dixon
Chairman, Sunset Committee
Alabama State House
Montgomery, AL 36130

Dear Senator Dixon:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the Board of Massage Therapy in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the Board of Massage Therapy, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Jones", written in a cursive style.

Ronald L. Jones
Chief Examiner

Examiners
Glenn Davis
Robin Hutcheson

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PROFILE

Purpose/Authority

The Board of Massage Therapy licenses massage therapists, massage establishments, massage therapy schools, and massage therapy instructors. The board investigates complaints regarding licensees and those practicing without a license. The board also performs inspections of massage therapy establishments. The board operates under authority of the *Code of Alabama 1975*, Sections 34-43-1 through 34-43-21.

Characteristics

Members and Selection	Seven (7) – Appointed by the Governor, subject to confirmation by the Senate. <i>Code of Alabama 1975</i> , Section 34-43-6(b)
Term	4 years No more than two consecutive full terms. <i>Code of Alabama 1975</i> , Section 34-43-6(c)
Qualifications	Five (5) members licensed by the board. Two (2) public members who have never been licensed and do not have any direct financial interest in the massage therapy profession. Each board member must be: <ul style="list-style-type: none">• A U. S. citizen,• An Alabama resident for at least two years immediately preceding the appointment,• A high school graduate or equivalent, Members are required to be selected based upon personal merit and qualifications, not based upon membership or affiliation with an association. <i>Code of Alabama 1975</i> , Section 34-43-6(b)
Racial Representation	Minority representation on the board shall reflect the racial diversity of the state. There are two (2) Black members <i>Code of Alabama 1975</i> , Section 34-43-6(b)

Geographical Representation	No statutory requirement
Consumer Representation	Two (2) consumer members One (1) consumer member currently serving <i>Code of Alabama 1975</i> , Section 34-43-6(b)
Other Representation	No statutory requirement
Compensation	Members are not compensated for their services, but receive the same per diem and travel allowance as state employees for each day the board meets and conducts business. <i>Code of Alabama 1975</i> , Section 34-43-6(g)
<i>Operations</i>	
Administrator	Executive Director - Keith Warren, independent contractor Warren and Company, Inc. provides administrative services as well as facilities and equipment under contract with the board. Contract amount - \$66,000 per fiscal year. Contract ends 10/21/2007 <i>Code of Alabama 1975</i> , Section 34-43-6(i)
Location	610 South McDonough St. Montgomery, AL 36104
Examinations	An examination, accredited by the National Committee for Certifying Agencies, is administered through Thomson Prometric of Lawrenceburg, NJ. The board has the authority to administer a written, oral, or practical examination but has never done so. Pass/fail statistics were not available from the board's offices. <i>Code of Alabama 1975</i> , Section 34-43-7(a)(1)

Renewals	<p>Massage therapists and massage therapy businesses are licensed for two years from the date of issuance. <i>Code of Alabama 1975</i>, Section 34-43-13</p> <p>Massage therapy schools register annually. <i>Code of Alabama 1975</i>, Section 34-43-20(a)(3)</p> <p>Massager therapy instructors register once. (Statutes do not require renewal of registration for massage therapy instructors beyond requiring instructors to be currently licensed as massage therapists, which requires renewal every two years.) <i>Code of Alabama 1975</i>, Section 34-43-20(c)</p>										
Licensees	<p>As of February 22, 2007 the number of Alabama licensees/registrants is as follows:</p> <table> <tr> <td>Massage Therapist –</td><td>1,270</td></tr> <tr> <td>Massage Therapy Establishment –</td><td>336</td></tr> <tr> <td>Massage Therapy School –</td><td>14</td></tr> <tr> <td>Massage Therapy Instructor –</td><td><u>133</u></td></tr> <tr> <td>Total Licensees/registrations –</td><td>1,753</td></tr> </table>	Massage Therapist –	1,270	Massage Therapy Establishment –	336	Massage Therapy School –	14	Massage Therapy Instructor –	<u>133</u>	Total Licensees/registrations –	1,753
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Reciprocity	<p>The board does not practice true reciprocity. The board may license an applicant if the applicant is licensed or registered in another state, which, in the opinion of the board, has standards of practice or licensure that are equal to or stricter than the requirements imposed by the Alabama licensing law.</p> <p><i>Code of Alabama 1975</i>, Section 34-43-9(b)</p>										
Continuing Education	<p>16 hours of continuing education within the 24 months preceding the date of renewal.</p> <p>Mandatory for renewal</p> <p><i>Code of Alabama 1975</i>, Section 34-43-21(a)</p>										
Employees	<p>None</p> <p>The board contracts with Warren and Company, Inc. for administrative services and with Mike James for inspection and investigative services.</p>										

Legal Counsel	Mary Windom, Deputy Attorney General - Employed by the Electrical Contractors Board half-time; utilized by the Board of Massage Therapy under agreement with the Electrical Contractors Board. The Electrical Contractors Board is also administered by Warren & Company.
Subpoena Power	None, except as provided in the Administrative Procedure Act relative to hearings.
Internet Presence	www.almtbd.state.al.us - contains <ul style="list-style-type: none"> • Office contact information • Board members and contact information • Law • Rules and Regulations • Forms including; Letter to applicants, Instructions; Licensure requirements, Application package request form, Massage establishment licensure procedures; Consumer complaint form, application for licensure as a massage therapy instructor; and applications and renewals for massage therapists, establishments and schools • Disciplinary Actions taken • Newsletter (Spring 2004 last date posted) • Minutes of some meetings • Roster of Massage Therapists <p>Online renewal of licenses is not available to licensees.</p>
Attended Board Member Training	Two board members and the executive secretary.
<i>Financial</i>	
Source of Funds	Licensing Fees
State Treasury	Yes, Special Revenue Fund 0920
Unused Funds	Unused funds are retained by the board

SIGNIFICANT ITEMS

1. **Board members do not believe the board is adequately staffed.** Two of the four board members who responded to a questionnaire indicated they do not believe the board is adequately staffed. The board has no employees. Administrative and investigative services are provided under contract.
2. **Board members stated that lack of current appointments to the board is impeding the board's functioning -** Three of the four board members who responded to a questionnaire indicated that a significant issue facing the board is the lack of current appointments to the board that need to be filled to adequately function as a board. Of the seven members, three are serving significantly past expiration of their terms of office. One has resigned in the middle of his term, and the term of another will expire September 30 of this year. (See information on board members in the appendices of this report)
3. **The board's offices were closed in observance of Good Friday, which is not a state holiday.** Warren and Company, a private entity, has contracted to provide office space and administrative services for the Board of Massage Therapy and five other state agencies; including the Board of Podiatry, the Electrical Contractors Board, the Board of Auctioneers, the Dry cleaning Environmental Response Trust Fund Advisory Board, and the Board of Licensure for Professional Geologists.

The *Code of Alabama 1975*, Section 1-3-8 (a) names the holidays on which state offices are to be closed. Good Friday is not among them. On other days, state offices are expected to be open for business. Since the contract with Warren & Company specifies that the contractor will conduct the affairs of the board in accordance with state law and regulations, the contractor is obligated to keep the board's office open on days that are not state holidays.

4. **Legislation proposed in the 2007 Regular Legislative Session makes the following changes to the massage therapy licensing law:**
 - Deletes the requirement that a massage therapy school be accredited by the Department of Education.
 - Deletes any reference to a temporary permit.
 - Deletes the requirement for Senate confirmation of board members.
 - Provides additional exemptions to the law
 - Provides compensation for board members
 - Changes the title of the executive secretary to "executive director".
 - Lists reasons for excused absences from board meetings
 - Deletes the requirement to file a board member's oath of office with the Governor.
 - Deletes the requirement for the Governor to issue certificates of appointment to board members.
 - Increases the minimum hours of supervised instruction prerequisite for licensure.

- Requires that licensees be 18 years of age with a high school diploma or equivalent.
- Removes the requirement for licensees to be United States citizens.
- Allows the board to set reasonable fees at its discretion.
- Increases the board's discretion to license establishments.
- Expands the board's authority to revoke or suspend licenses.
- Changes the penalty for violation of the massage therapy licensing law from a Class C misdemeanor to a Class A misdemeanor.

The bill did not become law.

STATUS OF PRIOR FINDINGS

All prior findings have been resolved with the exception of the following:

1. **PRIOR FINDING - Board Members Do Not Believe the Board is Adequately Funded** - Three of four board members responding to the questionnaire answered "no" to "Is the board adequately funded?" The remaining member did not respond to this question. In the minutes of 8/26/05, the board approved a motion to request a \$50,000 emergency loan from the Director of Finance. According to the executive director, the current cause of financial instability is an ongoing legal issue. The board provided information which showed that the Montgomery County Circuit Court ruled in favor of the board in upholding the revocation of a license and the levying of a \$10,000 fine. The board expended approximately \$40,000 on this case. In an effort to maintain financial stability, the board submitted legislation in the 2006 legislative session that would allow the board to set named fees by rule at its discretion. The legislation was not successful.

Current Status - In response to questionnaires sent to board members, three of four responded "no" to the question, "Is the board adequately funded?" The board proposed legislation (SB402) during the 2007 legislative session that would, among other things, allow the board to set the amount of each fee at its discretion in an effort to maintain financial stability. The bill, which did not become law, is included in the appendices of this report.

2. **PRIOR FINDING - A provision in the board's licensing law (*Code of Alabama 1975, Section 34-43-9(2) (c)*) which requires that applicants for licensure must be United States citizens may be unconstitutional.** Section 34-43-9(2) (c) states that, "Notwithstanding any other provision of this section to the contrary, *each applicant for licensure shall be a citizen of the United States.*"

The U. S. Supreme Court has ruled that refusal of professional licensure solely on the grounds of citizenship is not constitutional. In re Griffiths, 413 U. S. 717 (1973), the court held that exclusion of aliens from the practice of law violates the Equal Protection Clause of the Fourteenth Amendment. Also, in Examining Board v. Flores De Otero, 426 U. S. 572 (1976), the court held that "The statutory restriction on the ability of

aliens to engage in the otherwise lawful private practice of civil engineering is plainly unconstitutional."

This finding has appeared in past two routine examinations by the Examiners of Public Accounts.

Current Status - The board sought corrective legislation during the 2006 legislative session (HB584 and SB474). The legislation was not successful. The board again proposed corrective legislation for this and other matters in SB402 during the 2007 legislative session. SB402 is presented in the appendices of this report. The bill did not become law.

3. **PRIOR FINDING - Licensee files contained errors in or omissions of documentation showing compliance with the massage therapy licensing law.** In a sampling of fifteen massage therapist files, ten did not have required proof of current liability insurance, and one was not notarized, as required by the board. In a sampling of three establishment files, none had proof of required current liability insurance. The file of one school sampled did not have proof of accreditation from the Department of Postsecondary Education. One application was faxed, which the board has specifically made unallowable.

The *Code of Alabama 1975*, Section 34-43-7(a) (8) requires the board to "Adopt rules that require massage therapists to carry professional and general liability insurance with an "A" rated or better insurance carrier in the amount of at least one million dollars (\$1,000,000). The massage therapist shall produce evidence of coverage upon request of the Board." The board's initial and renewal application forms require proof of insurance to be submitted with the application.

The board's administrative rule 532-X-3-.03. Application And License states that:

(1) The Board shall adopt and make available an application form. On the return of the form to the Board by the applicant, the form shall remain the property of the Board. No application received by facsimile will be accepted.

(3) All applications must be submitted in English, type or printed in black ink. (NOTE: The board's applications require the signature of the applicant to be notarized.)

Rule 532-X-3-.04. Establishment Licensure.

(5) The applicant may be requested to submit to the Board evidence of or written policy covering the following:

(a) **Current liability insurance coverage for bodily injury and property damage for the establishment; [required on both initial and renewal applications]**

The *Code of Alabama 1975*, Section 34-43-3(3) (a), provides that a board-approved massage therapy school is one where massage therapy is taught and, **"If located in Alabama is accredited by the Department of Education** [Department of Postsecondary Education actually has jurisdiction here] **and approved by the board as**

meeting the minimum established standards of training and curriculum as determined by the Board."

We recommended that the board should ensure that all qualifying criteria are met prior to issuing any license and that proof of having met the criteria are documented in the records of each licensee. Records should show that schools approved by the board have been accredited by the Department of Postsecondary Education.

Massage Therapist Licensees

Of sixty-seven (67) Massage Therapy licensees sampled, twelve (12) did not report their social security numbers, six (6) did not have renewal documentation in their files, twenty-four (24) had no proof of required liability insurance, four (4) did not answer criminal background questions, two (2) were not notarized, and one (1) did not have the required educational hours.

Establishment Licensees

Of fourteen (14) establishment licensees sampled, five (5) did not include the Social Security number of the person completing the application, four (4) lacked proof of insurance, and one (1) application was not notarized.

School Licensees

Of sixteen (16) schools sampled, thirteen (13) had no renewal documentation, two (2) did not submit the required documents for licensure, one (1) listed an instructor who held an expired license, and none of the schools submitted a social security number of the person applying for the license. None of the schools had documentation of accreditation or licensure from either the State Department of Education (state school) or Postsecondary Education (private school). The examiner was able to locate state education licensure status for all but four schools on the Department of Postsecondary Education website. These four schools appear not to be accredited or licensed by the State Department of Education, the Department of Postsecondary Education, or accredited by an accreditation commission or agency recognized by the US Department of Education.

Instructor Licensees

Of thirteen (13) instructors sampled, none provided their social security numbers, six (6) did not have proof of experience, and one (1) was not a currently licensed massage therapist (LMT).

Licensees Generally

Of fifty-three (53) insured licensees tested, six (6) were not insured by a company rated "A" or better, as required. The examiner asked the executive director, how the board checked for the required rating. The executive director stated that he didn't know it had to be done and it is not being done. The examiner was able to locate a rating for most of the companies from which licensees had insurance.

Current Status - The board continues to fail to collect social security numbers from its applicants for massage instructor licenses. No social security numbers were collected

on any of the five (5) massage instructor applications reviewed. When notified of this discrepancy, the executive secretary stated that the application form would be modified to include the collection of social security numbers from massage instructor applicants and would be uploaded to the board's website as soon as possible.

In a sample of 25 newly licensed massage therapists, one lacked documentation of required liability insurance, all were notarized and had answered criminal background application questions.

The board attempted in SB402 of the 2007 Regular Legislative Session to have the requirement for accreditation of massage therapy schools by the Department of Education deleted from the massage therapy licensing law. SB402, which is included in the appendices of this report, did not become law.

4. **PRIOR FINDING** - The board has promulgated rules which conflict with Alabama law and has implemented application forms without regard to the Alabama Administrative Procedure Act as follows:

- The *Code of Alabama* 1975, Section 34-43-6 (c) states that, "Of the initial seven appointees to the Board, three members shall be appointed for terms ending September 30, 1997, and four members shall be appointed for terms ending Sept 30, 1999. Thereafter, successors shall be appointed for terms of four years, each term expiring on September 30."

Rule 532-X-2-.01 (1) states that, "The Board shall consist of seven members, of whom five will be licensed massage therapists and two will be public members. The Board members shall serve no more than two consecutive full terms of two years each..."

- The *Code of Alabama* 1975, Section 34-43-6 (f) states that, "The Board shall hold its first meeting within 30 days after the initial members are appointed. The Board shall hold meetings during the year as it determines necessary, two of which shall be the biannual meetings for the purpose of reviewing license applications. Additional meetings may be held at the discretion of the chair or upon written request of any three members of the Board. A quorum of the Board shall be a majority of the current appointed board members. "

Rule 532-X-2-.01(3) states that, "The chairperson shall conduct the biannual and additional Board meetings, and ascertain the presence of a quorum of at least four Board members prior to conducting the business of the Board. The chairperson shall call meetings in..."

- The board adopted and implemented application forms without regard to the Administrative Procedure Act. The forms have not been filed with

the Legislative Reference Service or published in the Agency Administrative Code, as required by the Administrative Procedure Act

The *Code of Alabama 1975*, Section 41-22-3 (9) provides the following definition of a rule. "Each agency regulation, standard or statement of general applicability that implements, interprets, or prescribes law or policy, or that describes the organization, procedure, or practice requirements of any agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or an existing rule or by federal statute or by federal rule or regulation; *All forms must be filed with the secretary of the agency and the Legislative Reference Service and all forms (except intergovernmental, interagency, and intra-agency forms which do not affect the rights of the public and emergency forms adopted pursuant to 41-22-5) must be published in the Agency Administrative Code.* "

We recommended in 2002 that the board should adopt its application forms in accordance with the Administrative Procedure Act and publish the forms in the board's Administrative Code.

Current Status - The board amended **Rule 532-X-2-.01 (3)** correcting the conflicting language regarding the length of board member terms but failed to correct the conflicting language concerning quorum requirements for its meetings.

The board's application forms have been filed with the Legislative Reference Service and published in the Agency Administrative Code, as required by the Administrative Procedure Act.

5. PRIOR FINDING - Complainants are not satisfied with the board's efforts to resolve complaints. We sent questionnaires to the 36 people who had filed complaints with the board. Of the 18 who responded:

- * Fifty-five percent said the board did not acknowledge receipt of the complaint.
- * Fifty-five percent (six of whom are included in the first 55%) said the board did not inform them of the complaint's resolution.
- * Twenty-four percent said the board did not resolve the complaint in a timely manner.
- * Fifty-nine percent were not satisfied that the board did all it could to resolve their complaint.

According to the executive director, complainants are notified upon receipt of the complaint and upon its resolution.

Current Status - We sent additional questionnaires to fourteen (14) complainants who had filed complaints with the board since we made the finding. Of the eleven (11) who responded:

- Five (46%) stated receipt of their complaint was not promptly acknowledged

- Six of ten (60%) stated the results of the complaint investigation was not communicated to them
- Seven of eleven (64%) stated they did not feel the board did everything it could to resolve the complaint
- Four of nine (44%) indicated the employee responding to their complaint was neither knowledgeable or courteous

6. **PRIOR FINDING - The term length of the most recently appointed board member does not meet the requirements of the board's enabling statutes.** The Governor's Office appointed a board member in error to a term that will end on September 30, 2005 rather than to a term that would correctly end on September 30, 2003. The length of this appointment defeats the mandatory timing of expiration of terms created by the board's enabling statutes.

The *Code of Alabama 1975*, Section 34-43-6(c), provides for the initial appointment of board members to one and three-year terms and to 4-year terms thereafter, resulting in the staggering of expiration of terms in two-year intervals. This section further provides that in the event of a vacancy, the Governor shall by appointment fill such unexpired term. The term of the vacant position to which the Board member was appointed ended in September 30, 1999 and would again end on September 30, 2003. The appointed term of the new member will end on September 30, 2005; two years later than the term would normally expire. Attorney General's Opinion 95-00169 to the Board of Chiropractic Examiners states that appointment of board members to terms other than those originally set forth by statute are not appropriate and defeat the legislative intent of staggered terms.

The *Code of Alabama 1975*, Section 34-43-6 (b), states that the Board shall consist of seven members appointed by the Governor, subject to confirmation by the Senate. No member of the Board shall serve more than two full consecutive terms. Subsection (c) states that of the initial seven appointees to the Board, three members shall be appointed for terms ending September 30, 1997, and four members shall be appointed for terms ending September 30, 1999. Thereafter, successors shall be appointed for terms of four years, each term expiring on September 30.

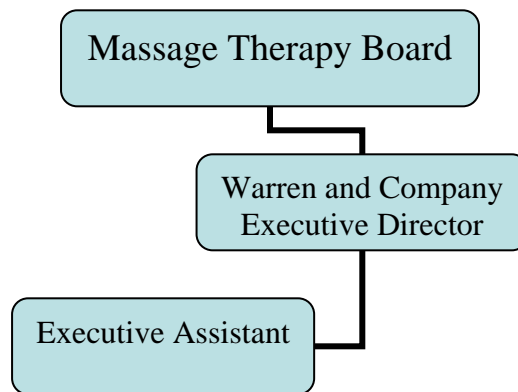
We recommended that the board should seek to have the member's appointment term corrected by the Governor's Office to meet the requirements of the board's enabling statutes.

We noted in a later examination in 2003 that the board had not sought a correction of a board member's term and again recommended that the board should seek to have the board member's appointment term corrected by the Governor's Office to meet the requirements of the board's enabling statutes.

Current Status - The Governor's Office has again appointed a board member in error to a term to end on April 12, 2008 rather than to a term that would correctly end on September 30, 2008. In his opinions 95-00169, 2005-070, and 2006-110, the Attorney

General has stated that unless otherwise provided by law, terms are date certain, that each term begins immediately upon expiration of the prior term, and that term duration is not affected by the date of appointment or the service of members.

ORGANIZATION



PERSONNEL

The board has no employees. The board has contracted with Warren and Company, Inc. to provide administrative services to include an executive director. The company maintains the board's records and performs administrative services for the board from its location at 610 South McDonough St. Montgomery, AL. The current contract with Warren and Company, Inc. is for \$66,000 annually to be paid in monthly installments. The contract expires October 21, 2007.

The board also contracts with an investigator, Carl "Mike" James, for investigative and inspection services. The current annual contract amount with James is \$18,000. The contract expires September 30, 2007.

The board has an agreement with the Electrical Contractors Board (ECB) to share the services of the Electrical Contractor's Board's attorney, Mary Windom.

PERFORMANCE CHARACTERISTICS

Number of Persons per Licensee in Alabama and surrounding States

State	Population (Estimate)*	Number of Licensees	Persons per Licensee
Alabama**	4,599,030	1,753	2,624
Florida	18,089,888	27,157	667
Georgia ***	9,363,941	734	12,757
Mississippi	2,910,540	800	1,139
Tennessee	6,038,803	4,115	1,468

* U.S. Census July 2006 estimate

** As of 2/22/2007

*** As of 5/11/2007, The Georgia's licensure law for massage therapists became effective July 2006.

Operating Disbursements per Licensee (2005-2006 fiscal year) - \$ 73.44

Notification to Licensees of Board decisions to Amend Administrative Rules

The board complied with notification procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules. Licensees are not specifically notified of proposed changes.

Inspections

The board is authorized to inspect the premises of a new applicant for establishment licensure and has an administrative rule governing inspections (532-X-3-.04(6)). The rule states that, "Upon receipt of an application for a massage therapy establishment license, the Board may cause an initial inspection to be made of the site to confirm that the establishment meets the above requirements and is to be utilized for massage therapy and not for the purposes unlawful under the massage therapy statutes."

According to the executive director, the board does not conduct initial inspections on a regular schedule, but does conduct site inspections randomly. During the period of FY 2003- FY 2005, two hundred forty-seven inspections were conducted.

The board's contract investigator attempts to complete at least four establishment inspections per month. The investigator chooses a town and plans to stay for 3-4 days in the area. Prior to traveling to the town, he searches the Internet for massage services in the area and prints maps to the locations found in his search. He also obtains the establishment licensee roster from the board to identify licensed establishments in the area to be inspected. Once he arrives in town, he checks the local Yellow Pages for massage services. While inspecting each establishment, he asks where else in town massage services are offered, in order to obtain leads.

James uses a compliance checklist for the inspection process which includes the following items:

- Is the establishment number displayed?
- Are the employed massage therapists' license numbers displayed?
- Does the establishment have liability insurance coverage?
- Is the establishment compliant with state and local fire/safety requirements?
- Is there a provision for extermination (of pests)?
- Is the establishment providing for the laundering and sanitation of equipment and linens?
- Does the establishment have adequate lavatory and toilet facilities?
- Does the establishment have adequate and sanitary shower facilities?
- Does the establishment have a copy of the Rules, Regulations, and Laws concerning massage therapy?

The inspection sheet is dated and signed by the investigator. If there are compliance discrepancies, the establishment is given a correction deadline date, and the business is revisited. If an establishment does not cooperate with the inspection, disciplinary action is possible.

Complaints

The board receives complaints from consumers, licensees, and board members. The subject of complaints ranges from unlicensed therapists and establishments to sexual misconduct. Some complaints have been received concerning massage schools and/or instructors. Complaints are filed separately from licensee files and are maintained on an electronic spreadsheet. According to the executive director, complainants are notified upon receipt of the complaint and upon its resolution; however, 46% of respondents to our QUESTIONNAIRES stated that they were not notified of the board's receipt of their complaint and 60% also stated that they were not notified of the resolution of the complaint.

The *Code of Alabama 1975*, Section 34-43-7(5) authorizes investigation of complaints by the board. The board's administrative rule 532-X-5-.04 addresses the complaint and discipline process. The following procedures were presented to the examiner:

Initial Documentation	Upon receipt of a signed complaint, the executive director notifies the complainant of its receipt.
Investigative Committee Members	After an investigation by the board's investigator, the complaint is addressed by the investigative committee of the board which is comprised of the investigator, the executive assistant, the board's legal counsel, and one board member from the geographical area from which the complaint was received. If the complaint warrants a hearing it is presented to the board as a whole with the board member on the investigative committee abstaining from asking any questions or voting.

Formal Hearings	If the board decides the allegations have merit, a formal hearing is scheduled, and witnesses are contacted. The accused has the right to appear personally and to have counsel present. If the board determines that the allegations do not have merit, the complaint is dismissed after an administrative hearing.
Anonymous Complaints	The executive director stated that the board does not accept anonymous complaints.
Investigative Board Members	The board does not investigate complaints. The board utilizes a contract investigator for investigation of complaints.

Complaint Resolution Statistics

Complaints Received (*)		Complaints Resolved					
Fiscal Year Received	Number of Complaints	FY 2003	FY 2004	FY 2005	FY 2006	Pending	Average Length of time (months) until resolution
2003	16	0	1	0	15	0	41.8
2004	12	0	7	0	5	0	29.3
2005	16	0	1	0	14	1	17.5
2006	11	0	0	0	10	1	1.2
2007	3	0	0	0	0	3 (#)	3

(*) as of 5/4/07

(#) In May 2007, the executive director stated that the current delay in resolving complaints is due to the board giving precedence to complaints alleging sexually oriented practice by a licensee and by an ongoing court case that was recently concluded in favor of the board.

SMART BUDGETING

Acts of Alabama, 2004-50 (HJR89) states “That all state agencies and entities receiving legislative appropriations are requested to submit to the Joint Legislative Budget Committee budget proposals in performance based budget language and form. This request is applicable for proposals for the 2005-2006 fiscal year to be submitted to the 2005 Regular Session and for each succeeding fiscal year. The Director of Finance is requested to inform each public agency or entity of our desires concerning this matter.”

To comply with this request, the Director of Finance implemented a system of budgeting that requires each agency to report its performance, the system to be named SMART, an acronym for Specific, Measurable, Accountable, Responsive, Transparent.

As a part of the SMART Budgeting system, each agency is required to submit its goals and objectives to the Department of Finance. The goals are to be stated as long term, multi-year targets which are to be achieved through accomplishment of stated objectives, which are single-year targets. In order to report progress, the goals and objectives must necessarily be designed so that the agency can measure annual progress toward their achievement. The SMART Budgeting system includes an Operations Plan and a Quarterly Performance Report. The performance report presents information on achievement of an agency’s annual objectives. If an agency has not included at least one objective for each goal, performance relative to that goal will not be reported. For the 2006 fiscal year, each licensing/regulatory agency was required to have at least one goal and one or more objectives directly related to the goal. Additional annual objectives were allowed without corresponding goals.

Among agencies that were not used to reporting performance, we found confusion as to how to design the goals and objectives and how to differentiate between goals and objectives. Routinely we found goals with no directly related objectives. Both goals and objectives were often too abstract to be measurable, and progress toward their achievement could not be meaningfully reported. The Department of Finance is aware of these deficiencies and is taking remedial steps.

In these respects, the Board of Massage Therapy was no exception. Some goals were not accompanied by directly related objectives. Some goals and objectives were abstract, and progress toward their achievement could therefore not be meaningfully measured and reported.

The board submitted a 2006 Operations Plan and a Quarterly Performance Report for all four (4) quarters. The board submitted an Operations Plan for the 2007 fiscal year. The board’s SMART Operations Plans for the 2006 and 2007 fiscal years and the Quarterly Performance Report for the 2006 fiscal year can be found in the appendices of this report.

The board’s performance goals and objectives for the 2006 and 2007 fiscal years and the examiner’s comments are presented in the following table.

2006

2006 GOALS	COMMENTS
1. To broaden public awareness through newsletters, web sites, and advertising	The goal is too abstract to be meaningfully measured. There is no stated measurable long-term target. Also, since there is no directly related objective, progress toward achieving this goal will not appear in the board's performance report.
2. To strengthen the massage therapy law through legislation	The goal does not address the performance of any named activity of the board. Also, since there was no accompanying annual objective, performance relative to this goal was not reported.
3. To complete complaint investigations within 60 days of complaint receipt	The goal is appropriate and measurable. There is an accompanying objective. Performance relative to this goal was reported.

2006 OBJECTIVES	REPORTED	COMMENTS
1. Maintain unit cost of licensing and file maintenance	\$137,576	There is no unit cost stated as a baseline from which to determine whether the unit cost was maintained. The performance report, which reports total cost of operations rather than unit cost, does not show whether the objective was achieved.
2. Complete 80% of consumer complaint investigations within 60 days of receipt	11	The objective is appropriate. However, data relative to the objective is presented on the performance report as the number of complaints received rather than the percentage of complaint investigations completed within the target period. As a result performance for this objective was not reported.

2007

2007 GOALS	COMMENTS
1. To issue and renew licenses expeditiously	This goal is has no stated long-term target. Consequently, it cannot be determined when the goal is achieved. Also, since there is no directly related objective, progress toward achieving this goal will not appear on the board's performance report.
2. To investigate complaints expeditiously	This goal has no long-term target. Consequently, it cannot be determined when the goal is achieved. There is an accompanying objective. Performance relative to this goal can be reported.
3. To handle disciplinary cases expeditiously	This goal is has no stated long-term measurable target. Consequently, it cannot be determined when the goal is achieved. Also, since there is no directly related objective, progress toward achieving thee goal will not appear on the board's performance report.
4. To increase funding through licensure fees	The goal does not address the performance of any activity of the board.

2007 OBJECTIVES	COMMENTS
1. Maintain unit cost of licensing and file maintenance	There is no unit cost stated as a baseline from which to determine whether the unit cost was maintained.
2. Complete 80% of complaint investigations within 60 days of receipt	The objective is appropriate.

REGULATION IN CONJUNCTION WITH OTHER ENTITIES

Although no other state agency appears to also directly regulate the practice of massage therapy, both chiropractors and physical therapists may perform work within the scope of their professions that would otherwise be considered to be within the scope of work licensed by the Board of Massage Therapy. The practice of chiropractors and physical therapists is licensed and regulated in Alabama by separate state boards.

FINANCIAL INFORMATION

The board utilizes Special Revenue Fund 0920 in the State Treasury for the conduct of its financial transactions.

Schedule of Fees

Fee	Amount Charged	Amount Authorized	Code of Alabama 1975
Examination Fee	\$160	Not to exceed \$160	§ 34-43-14(a)(1)
License	\$100	Not to exceed \$100	§ 34-43-14(a)(2)
Renewal (biennially)	\$100	Not to exceed \$100	§ 34-43-14(a)(3)
Initial Application Fee or Resubmission of initial application	\$25	Not to exceed \$25	§ 34-43-14(a)(4)
Initial Establishment License	\$100	Not to exceed \$100	§ 34-43-14(a)(5)
Renewal of Establishment License	\$50	Not to exceed \$50	§ 34-43-14(a)(6)
Initial Registration as Massage Therapy School	\$50	Not to exceed \$50	§ 34-43-14(a)(7)
Renewal for Massage Therapy School	\$10	Not to exceed \$10	§ 34-43-14(a)(8)
Massage Therapy Instructor Registration (one time fee)	\$10	Not to exceed \$10	§ 34-43-14(a)(9)
Reactivation of Inactive License	\$75	Not to exceed \$75	§ 34-43-14(a)(10)
Late fee	\$25	Not to exceed \$25	§ 34-43-14(a)(11)
License Verification	\$15	Not to exceed \$15	§ 34-43-14(a)(12)

Fee	Amount Charged	Amount Authorized	Code of Alabama 1975
Duplicate License Certificate or Name change on License	\$10	Not to exceed \$10	§ 34-43-14(a)(13)
Copy of Alabama Licensed Massage Therapists Roster	\$30	Cost Recovery	§ 34-43-14(b)
Copy of Approved Massage Therapy Schools Roster	\$5	Cost Recovery	§ 34-43-14(b)
Copy fee (per page)	\$25	Cost Recovery	§ 34-43-14(b)
Postage and Handling	\$1.50 per item handling plus actual postage	Cost Recovery	§ 34-43-14(b)
Administrative Fine	Up to \$10,000		34-43-15(d)(1)(a)

Schedule of Receipts, Disbursements, and Balances

	FY 2006	FY 2005	FY 2004	FY 2003
<u>Receipts</u>				
License Fees	104,522.00	121,067.48	82,317.00	60,649.75
<u>Disbursements</u>				
Travel In-State	3,855.76	1,254.64	4,162.38	3,920.45
Travel Out-of-State	-	-	1,379.79	-
Rentals and Leases	75.00	-	-	-
Utilities and Communications	3,106.18	785.49	1,502.31	1,111.07
Professional Services	116,928.16	70,712.53	100,233.98	71,843.65
Supplies, Materials and Operating Expenses	4,770.02	1,800.06	2,832.51	6,079.22
Total	128,735.12	74,552.72	110,110.97	82,954.39
Excess (Deficiency) of Receipts Over Disbursements	(24,213.12)	46,514.76	(27,793.97)	(22,304.64)
Cash Balance at Beginning of Year	59,420.23	12,905.47	40,699.44	63,004.08
Cash Balance at End of Year	35,207.11	59,420.23	12,905.47	40,699.44
Reserved for Year-End Obligations	-	(11,000.00)	-	(1,731.60)
Unreserved Cash Balance	35,207.11	48,420.23	12,905.47	38,967.84

Operating Receipts Vs Operating Disbursements (Chart)



QUESTIONNAIRES

Questionnaires were sent to all seven (7) board members: Four (4) responded.

Board Member Questionnaires

1. What are the most significant issues currently facing the Board of Massage Therapy and how is the board addressing these issues?
 - 1) "We are currently working on changes to the law & rules and regulations. The law requires that our board has 7 members. However, we have several seats that need to be filled to adequately function as a Board. This is a challenge."
 - 2) "The way the law is written in certain areas limits the Board – investigating people practicing massage who've never had a license; making other (more appropriate) test possible; management of which CEU's are approved."
 - 3) "The cost of prosecuting complaints. Legislative bills pending for revisions and clarifications."
 - 4) "Financing, waiting on new bd. Member appointments from the Gov's. office."

2. What changes to the Board of Massage Therapy laws are needed?
 - 1) "The Board is currently working on several changes to the law in which we hope to have presented @ the next legislative session. There are areas that need further clarification."
 - 2) "Those mentioned above plus others that correct outdated language and language that can be interpreted in more than one way."
 - 3) "'Clean up' language of first bill/laws."
 - 4) "Allowing increase in fees, empowering the bd. To actively pursue people practicing massage without a license."

3. Is the Board of Massage Therapy adequately funded?

1 Yes 3 No

 - 2) "I think as the number of licensees grows it should help."
 - 3) "The first years of investigations & trials caused funding problems. Need legal funding."

4. Is the Board of Massage Therapy adequately staffed?

2 Yes 2 No

 - 2) "We are in desperate need of additional Board members."

5. What is the purpose of your fiscal year end balance of unobligated funds?
- 1) "To continue the operation of the Board & its obligations to consumers and massage therapists in this state".
 - 2) "None that I am aware of."
 - 3) "Carryover & payoff state loan."
 - 4) "At this time the bd. has no unobligated funds and in fact, will repay outstanding debts to the state if any funds are available."

Complainant Questionnaires

Questionnaires were sent to fourteen (14) complainants who had filed their complaints since our significant item regarding complaints was reported.(See the STATUS OF PRIOR FINDINGS section of this report): Eleven (11) responded.

1. Was your complaint filed with the Board of Massage Therapy by:

7 Mail 2 Phone 1 Fax 1 Other

10) "Spoke to the board before in person"

2. Was receipt of your complaint promptly acknowledged?

5 Yes 5 No 1Unknown

4) "Yes" only after our calls."

9) "Can't remember"

If yes, approximately how long after you filed your complaint were you contacted by the Board of Massage Therapy?

1 Immediately 1 Within 10 days 1 Within 30 days
1 More than 30 days 6 Did not respond 1 Unknown

3) "Did not respond" and added that they called the board.

6) No answer checked. "11 months later. Complaint was filed February 2006. Communication received on Jan 2007."

7) Checked both "Within 30 days" and "More than 30 days"

10) "I have not heard from the board at all!"

3. Was the employee who responded to your complaint knowledgeable and courteous?

1 Knowledgeable 1 Courteous 4 Neither 3 Both

8) "Letter was a simple form letter of acknowledgement."

4. Did the Board of Massage Therapy communicate the results of investigating your complaint to you?

1 Yes 6 No 3 Unknown

5. Do you think the Board of Massage Therapy did everything it could to resolve your complaint?

1 Yes 7 No 3 Unknown

6. Were you satisfied with your dealings with the Board of Massage Therapy?

2 Yes 7 No _____Unknown

8) "I got a letter on one complaint 18 months after I sent information to the Board. I did not know if the person in question was still in the state at that point in time. I understand that there are probably lots of complaint forms sent in and that it is sometimes a lengthy and expensive process to investigate the complaints. Our state law needs to be re-written so the board's job will be a little easier when it comes to compliance by therapists."

AGENCY NAME: Board of Massage Therapy
FY 2006 SMART OPERATIONS PLAN

Agency No. 365

Page 1 of 1

		ACTUAL FY04	BUDGET FY05	BUDGET FY06
MISSION	To protect the public by licensing and regulation qualified massage therapists who have been trained to perform massage therapy services and have pledge to conduct themselves ethnically and professional. (Code Sec. 34-43-1) (Governor's Priorities 1 & 5)			
VISION (Optional)				
VALUES (Optional)				
CRITICAL ISSUES				
(Optional)				
Internal				
External				
PROGRAM	Professional and Occupational Licensing and Regulation Board (\$ in _____)	\$109.0	\$150.0	\$125.0
ACTIVITY	Certification and Regulation of Massage Therapists (\$ in _____)	\$109.0	\$150.0	\$125.0
MISSION				
GOAL(S)	To broaden public awareness through newsletters, web sites and advertising. To strengthen the massage therapy law through legislation. To complete complaint investigations within 60 days of complaint receipt.			
WORKLOAD				
CRITICAL ISSUES				
Internal	To expedite the complaint/disciplinary process.			
External	To ensure that all massage therapists offering services to the public are licensed.			
OBJECTIVES				
Spending	To increase spending by no more than 20%. (\$ in _____)			
	(\$ in _____)			
Staffing	(FTE)			
Efficiency	Maintain unit cost of licensing and file maintenance			
Quality	Complete 80% of consumer complaint investigations within 60 days of receipt			
STRATEGIES	To issue licenses as quickly as possible. To work with associations and entities to assist in educating the public regarding massage therapy. To pass legislation for the Board to re-evaluate the fees of the Board. To pass legislation for the Board to close certain loopholes of the law.			

Smart Quarterly Performance Report Fiscal Year: 2006											
Agency: 365 Massage Therapy Board											
Org:											
Program: 653 PRO AND OCCU LICENSING AND REG											
Activity: 0491 MASSAGE THERAPY BOARD											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Workload/Cost Factor	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
WC1: To increase disciplinary hearings by 5%	# of Hearings	1	0	1	0	1	0	1	0	4	0
Spending	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
SP1: To decrease spending by 5%	\$	116,750	85,084	3,250	8,281	2,500	23,315	2,500	20,696	125,000	137,576
Efficiency	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
EF1: Maintain unit cost of licensing and file maintenance	\$	116,750	86,084	3,250	8,281	2,500	23,315	2,500	20,696	125,000	137,576
Quality	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
QU1: Complete 80% of consumer complaint investigations within 60 days of receipt	# of Investigations	5	0	5	4	5	4	5	3	20	11
How have policy decisions and budget determinations made by the governor and the legislature in the fiscal year 2005-06 affected your agency in meeting its desired accomplishments and services?											
No.											
What administrative improvements did your agency make in fiscal year 2005-06 and what potential improvements do you foresee for future years? Include suggested changes in legislation or administrative procedures which would aid your agency in these improvements.											
There were no policy changes during this current fiscal year. The Board will be seeking legislative changes to correct some statutory matters as well as increasing fees in order to amply fund this program.											

State of Alabama EBO Form No. 4		2007 SMART Plan STRATEGIC PLAN SUMMARY		Massage Therapy Board Agency No.: 365																																								
AGENCY	365	Massage Therapy Board																																										
AGENCY ORG																																												
PROGRAM	653	PRO AND OCCU LICENSING AND REG	ACTIVITY																																									
MISSION To protect the public by licensing qualified massage therapists who have been trained to perform massage therapy services and have pledged to conduct themselves ethically and professional. VISION VALUES																																												
GOALS G1: To issue and renew licenses expeditiously. (GP-7) G2: To investigate complaints expeditiously. (GP-7) G3: To handle disciplinary cases expeditiously. (GP-7) G4: To increase funding through licensure fees. (GP-7)																																												
CRITICAL ISSUES Internal IC1: Improve Public Awareness. IC2: Increase Licensing fees. IC3: Current Board Member Appointments External EC1: Individuals with knowledge of uncompliant massage therapists and not submitting a complaint form.																																												
<table border="1"> <thead> <tr> <th>STRATEGIES AND ACTION PLANS</th> <th>Person Responsible</th> <th>Completion Date</th> </tr> </thead> <tbody> <tr> <td>1). Issuance and Renewal of Licenses (G1)</td> <td></td> <td></td> </tr> <tr> <td> 1). Issue new licenses with 3 days of approval</td> <td>Kath Warren</td> <td></td> </tr> <tr> <td> 2). Renew licenses within 3 days of receipt</td> <td>Kath Warren</td> <td></td> </tr> <tr> <td>2). Complaint Investigations (G2)</td> <td></td> <td></td> </tr> <tr> <td> 1). Process complaints immediately upon receipt</td> <td>Kath Warren</td> <td></td> </tr> <tr> <td> 2). Ensure complaint is investigated within 30 days</td> <td>Investigator</td> <td></td> </tr> <tr> <td>3). Disciplinary Actions (G3)</td> <td></td> <td></td> </tr> <tr> <td> 1). Hold Investigative Committee meeting within 5 days after the investigation is complete to determine violations and disciplinary proceedings</td> <td>Kath Warren</td> <td></td> </tr> <tr> <td> 2). To implement additional consent procedures for complaints so cases can be resolved more cost effectively</td> <td>Kath Warren</td> <td></td> </tr> <tr> <td>4). Increase Fees (G4)</td> <td></td> <td></td> </tr> <tr> <td> 1). Increase fees assessed by the Board in order to fulfill the statutory requirements set forth by the Legislature</td> <td>Board</td> <td></td> </tr> <tr> <td> 2). Increase will reflect financial need and be implemented gradually</td> <td>Board</td> <td></td> </tr> </tbody> </table>						STRATEGIES AND ACTION PLANS	Person Responsible	Completion Date	1). Issuance and Renewal of Licenses (G1)			1). Issue new licenses with 3 days of approval	Kath Warren		2). Renew licenses within 3 days of receipt	Kath Warren		2). Complaint Investigations (G2)			1). Process complaints immediately upon receipt	Kath Warren		2). Ensure complaint is investigated within 30 days	Investigator		3). Disciplinary Actions (G3)			1). Hold Investigative Committee meeting within 5 days after the investigation is complete to determine violations and disciplinary proceedings	Kath Warren		2). To implement additional consent procedures for complaints so cases can be resolved more cost effectively	Kath Warren		4). Increase Fees (G4)			1). Increase fees assessed by the Board in order to fulfill the statutory requirements set forth by the Legislature	Board		2). Increase will reflect financial need and be implemented gradually	Board	
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STRENGTHS Adequately staffed. Effective and efficient Investigator/Inspector. Dedicated Legal Counsel.																																												
WEAKNESSES Lack of funding Vacant Consumer Board Position.																																												
OPPORTUNITIES Consumer Awareness.																																												
THREATS Fee increase legislation failing.																																												

Fiscal Year: 2007 Smart Quarterly Performance Report											
Agency: 365 Massage Therapy Board											
Org:											
Program: 653 PRO AND OCCU LICENSING AND REG											
Activity:											
Performance Measures		First Quarter		Second Quarter		Third Quarter		Fourth Quarter		Annual	
Spending	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
SP1: To maintain current level of spending.	0	123,750	0	9,250	0	9,250	0	9,250	0	150,000.0	0
Staffing	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
ST1: NA	0	123,750	0	9,250	0	9,250	0	9,250	0	150,000.0	0
Efficiency	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
EF1: Maintain unit cost of examinations, licensing and file maintenance	0	123,750	0	9,250	0	9,250	0	9,250	0	150,000	0
Quality	Performance Indicator	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
QU1: To conduct business as professional and ethical as possible.	0	123,750	0	9,250	0	9,250	0	9,250	0	150,000.0	0

Statutory Provisions

CHAPTER 43. MASSAGE THERAPISTS.

HISTORICAL NOTES

HISTORY

Code Commissioner's Notes

Acts 1996, No. 96-661, § 22, provides: "This act shall become operative on January 1, 1997."

REFERENCES

ADMINISTRATIVE CODE

13 Ala. Admin. Code 532-X-1-.01 et seq., Board of Massage Therapy.

§ 34-43-1. Short title. [Historical Notes](#)

This chapter shall be cited as the "Alabama Massage Therapy Licensure Act."
(Acts 1996, No. 96-661, p. 1060, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding this section.

§ 34-43-2. Legislative findings and intent. [Historical Notes](#)

Massage therapy is declared by the Legislature to be a professional therapeutic health service. The Legislature finds that in the practice of massage therapy, there is a necessity to preserve and protect individual life and health, to promote the public interest and welfare by establishing licensure requirements and assuring public safety. It is the intent of this chapter to establish a regulatory agency and procedures that will ensure that the public is protected from the unprofessional, improper, unauthorized, and unqualified practice of massage therapy. All persons engaged in the practice of massage therapy in this state shall meet the requirements set forth in this chapter.
(Acts 1996, No. 96-661, p. 1060, § 2; Act 2000-704, p. 1430, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

Amendment notes:

The 2000 amendment, effective August 1, 2000, substituted "persons" for "massage therapists".

§ 34-43-3. Definitions. Historical Notes

For purposes of this chapter, the following terms shall have the following meanings:

(1) Advertise. Distributing a card, flier, sign, or device to any person or organization, or allowing any sign or marking on any building, radio, television, or by advertising by any other means designed to attract public attention.

(2) Board. The Alabama Board of Massage Therapy created pursuant to this chapter.

(3) Board-approved massage therapy school. A school where massage therapy is taught which is one of the following:

a. If located in Alabama is accredited by the Department of Education and approved by the board as meeting the minimum established standards of training and curriculum as determined by the board.

b. If located outside of Alabama is recognized by the board and by a regionally recognized professional accrediting body.

c. Is a postgraduate training institute accredited by the Commission on Accreditation for Massage Therapy.

(4) Establishment. A site, premises, or business where massage therapy is practiced by a licensed massage therapist.

(5) Examination. A National Certification For Therapeutic Massage and Bodywork Examination administered by an independent agency or another nationally or internationally accredited exam administered by an independent agency per approval of the board. The examination will be accredited by the National Committee for Certifying Agencies. The board retains the right to administer a written, oral, or practical examination.

(6) License. The credential issued by the board which allows the licensee to engage in the safe and ethical practice of massage therapy.

(7) Massage therapist. A person licensed pursuant to this chapter who practices or administers massage therapy or touch therapy modalities to a patron for compensation.

(8) Massage therapy instructor. A licensed massage therapist approved by the board to teach the practice of massage therapy.

(9) Person. Any individual, firm, corporation, partnership, organization, association, or other legal entity.

(10) Sexually oriented business. A sex parlor, massage parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult motel, or other commercial enterprise which has as its primary business the offering for sale, rent, or exhibit, or the exhibit of, items or services intended to provide sexual stimulation or sexual gratification to the customer.

(11) Student of massage therapy. Any person currently enrolled in an Alabama massage therapy school program approved by the board.

(12) Temporary permit. A temporary permit issued at the request of a massage therapist who is qualified according to the Alabama massage therapy law prior to approval by the board and not to exceed six months.

(13) Therapeutic massage and related touch therapy modalities. The mobilization of the soft tissue which may include skin, fascia, tendons, ligaments, and muscles, for the purpose of establishing and maintaining good physical condition. The term shall include effleurage, petrissage, tapotement, compression, vibration, stretching, heliotherapy, superficial hot and cold applications, topical applications, or other therapy which involves movement either by hand, forearm, elbow, or foot, for the purpose of therapeutic massage. Massage therapy may include the external application and use of herbal or chemical preparations and lubricants such as salts, powders, liquids, nonprescription creams, mechanical devices such as T-bars, thumpers, body support systems, heat lamps, hot and cold packs, salt glow, steam cabinet baths or hydrotherapy. The term includes any massage, movement therapy, massage technology, myotherapy, massotherapy, oriental massage techniques, structural integration, or polarity therapy. The term shall not include laser therapy, microwave, injection

therapy, manipulation of the joints, or any diagnosis or treatment of an illness that normally involves the practice of medicine, chiropractic, physical therapy, podiatry, nursing, occupational therapy, veterinary, acupuncture, osteopathy, orthopedics, hypnosis, or naturopathics.
(Acts 1996, No. 96-661, p. 1060, § 3; Act 2000-704, p. 1430, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

Amendment notes:

The 2000 amendment, effective August 1, 2000, in subdivision (5) added the final two sentences, in subdivision (10) inserted "or services", redesignated subdivision (11) as subdivision (13), added subdivisions (11) and (12), and in subdivision (13), as so redesignated, inserted "and maintaining".

§ 34-43-4. Regulated activities. [Historical Notes](#) [References](#)

Except as specifically provided by this chapter, beginning January 1, 1997, no person may do any of the following unless licensed pursuant to this chapter:

- (1) Advertise that he or she performs therapeutic massage or related touch therapy modalities.
 - (2) Hold himself or herself out to the public as a massage therapist, using any name or description denoting himself or herself as a massage therapist, or purporting to have the skills necessary to perform massage therapy.
 - (3) Practice massage therapy.
- (Acts 1996, No. 96-661, p. 1060, § 4.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons 5(1), 6(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 2-3, 5, 11-15, 18, 28.

§ 34-43-5. Exemptions. [Historical Notes](#) [References](#)

(a) The following persons shall be exempt from this chapter:

- (1) A student of massage therapy who is rendering massage therapy services under the supervision of a licensed massage therapy instructor, or any other supervisory arrangement recognized and approved by the board, including, but not limited to, a temporary permit. The student shall be designated by title clearly indicating the training status of the student.

(2) Qualified members of other professions who are licensed and regulated under Alabama law while they are in the course of rendering services within the scope of their license or regulation, provided that they do not represent themselves as massage therapists.

(3) A person giving massages to his or her immediate family.

(4) Visiting massage therapy instructors from another state, territory, or country teaching massage therapy, provided that the massage therapy instructor is licensed or registered as required in his or her place of residence. Visiting massage instructors teaching continuing education courses may teach in the state up to 100 hours per year without an Alabama license. One hundred hours of continuing education instruction or more shall require licensure.

(5) Members of the Massage Emergency Rescue Team (MERT) or any other nationally or internationally recognized disaster relief association who practice massage therapy in the state only during a time declared by the Governor to be a city, county, or state emergency. These therapists may work in the state for a period of time approved by the board.

(6) Native American healers using traditional healing practices, provided, however, Native American healers who use these practices but apply for a license pursuant to this chapter shall comply with all licensure requirements.

(7) A person acting under the supervision of a physician, a physical therapist, or a chiropractor within the scope of their license or regulation, provided that they do not represent themselves as massage therapists.

(b) Nothing in this chapter shall be construed to permit massage therapists licensed under this chapter to administer, dispense, or prescribe drugs, or engage in the practice of medicine in any manner, including, but not limited to, diagnosing or prescribing drugs for mental, emotional, or physical diseases, illnesses, or injuries. (Acts 1996, No. 96-661, p. 1060, § 5; Act 2000-704, p. 1430, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.


Amendment notes:

The 2000 amendment, effective August 1, 2000, in subsection (a), in subdivision (1) deleted "or an apprentice" following "A student", substituted "The student" for "The intern or apprentice", substituted "clearly indicating the" for "as a massage therapy intern, or by another title clearly indicating" and inserted "of the student", and added subdivision (7).

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons  5(1), 6(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 2-3, 5, 11-15, 18, 28.

§ 34-43-6. Alabama Board of Massage Therapy. [Historical Notes](#) [References](#)

(a) There is created the Alabama Board of Massage Therapy. The purpose of the board is to protect the health, safety, and welfare of the public by ensuring that licensed massage therapists, massage therapy schools, and massage therapy instructors meet prescribed standards of education, competency, and practice. To accomplish this mission, the board shall establish standards pursuant to this chapter to complete all board functions in a timely and effective manner and to provide open and immediate access to all relevant public information. The board shall communicate

its responsibilities and services to the public as part of its consumer protection duties. The board shall develop and implement a long range plan to ensure effective regulation and consumer protection.

(b) The board shall consist of seven members appointed by the Governor, subject to confirmation by the Senate. No member of the board shall serve more than two full consecutive terms. The members initially appointed to the board shall be appointed not later than July 16, 1996. Five of the members initially appointed to the board shall have been actively engaged in the practice of massage therapy for not less than three consecutive years prior to the date of their appointment to the board. Successor members to these initial five appointees shall be licensees of the board. Two members shall be public members who shall not be licensed, nor have been licensed in the past, and shall not have any direct financial interest in the massage therapy profession. Each board member shall be a high school graduate or shall have received a graduate equivalency diploma. Each board member shall be selected upon personal merit and qualifications, not per membership or affiliation with an association. Each board member shall be a citizen of the United States and a resident of this state for two years immediately preceding the appointment. Minority representation on the board shall reflect the racial diversity of the state.

(c) Of the initial seven appointees to the board, three members shall be appointed for terms ending September 30, 1997, and four members shall be appointed for terms ending September 30, 1999. Thereafter, successors shall be appointed for terms of four years, each term expiring on September 30.

(d) Vacancies on the board occurring prior to the expiration of a term shall be filled by the Governor within 30 days of the vacancy to serve for the remainder of the unexpired term. Each member of the board shall serve until his or her successor has been duly appointed and qualified.

(e) At the first meeting, and annually thereafter in the month of October, the board shall elect a chair and vice chair from its membership.

(f) The board shall hold its first meeting within 30 days after the initial members are appointed. The board shall hold meetings during the year as it determines necessary, two of which shall be the biannual meetings for the purpose of reviewing license applications. Additional meetings may be held at the discretion of the chair or upon written request of any three members of the board. A quorum of the board shall be a majority of the current appointed board members.

(g) Board members shall not receive compensation for their services, but shall receive the same per diem and allowance as provided to state employees for each day the board meets and conducts business.

(h) The board shall promulgate the rules necessary to implement this chapter pursuant to the Administrative Procedure Act.

(i) The board may employ, and at its pleasure discharge, an executive secretary and other officers and employees which may be necessary, including an attorney, to implement this chapter. The board shall also outline the duties and fix the compensation and expense allowances of the employees.

(j) An affirmative vote of a majority of the members of the board shall be required to grant, suspend, or revoke a license to practice massage therapy or a license to operate a massage therapy establishment.

(k) The board shall be financed only from income accruing to it from fees, licenses, other charges and funds collected by it, and any monies that are appropriated to it by the Legislature.

(l) Each board member shall be accountable to the Governor for the proper performance of his or her duties as a member of the board. The board shall report to the Governor annually and at other times as requested by the Governor. The Governor shall investigate any complaints or unfavorable reports concerning the actions of the board and take appropriate action thereon, including removal of any board member for misfeasance, malfeasance, neglect of duty, commission of a felony, incompetence, or permanent inability to perform official duties. A board member may be removed at the request of the board after failing to attend two consecutive properly noticed meetings.

(m) Members of the board are immune from liability for all good faith acts performed in the execution of their duties as members of the board.

(n) Appointees to the board shall take the constitutional oath of office and file it in the office of the Governor before undertaking any duties as a board member. Upon receiving the oath, the Governor shall issue a certificate of appointment to each appointee.

(Acts 1996, No. 96-661, p. 1060, § 6; Act 2000-704, p. 1430, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

Amendment notes:

The 2000 amendment, effective August 1, 2000, in subsection (a) deleted the penultimate sentence; in subsection (d) substituted "within 30 days of the vacancy to serve" for "in the manner of the original appointment"; in subsection (f) substituted "be a majority of the current appointed board" for "consist of four"; and deleted subsection (o).

Code Commissioner's Notes

In 1996, the Code Commissioner in the sixth sentence in subsection (b) deleted a comma after "direct financial interest" to correct a grammatical error. Also, in the first sentence of subsection (i) the Code Commissioner inserted a comma after "attorney" to correct a grammatical error.

Act 2004-76, § 2 provides: "The existence and functioning of the Alabama Board of Massage Therapy, created and functioning pursuant to Sections 34-43-1 to 34-43-21, inclusive, Code of Alabama 1975, is continued, and those code sections are expressly preserved."

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons 5(1); States 45.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18; States §§ 79-80, 82, 136.

§ 34-43-7. Powers and duties of board. [Historical Notes](#) [References](#)

(a) By rule, the board shall make provisions to do all of the following:

- (1) Examine and qualify for examination applicants for licensure and issue a license to each successful applicant.
 - (2) Adopt a seal, which shall be affixed to all licenses issued by the board.
 - (3) Prescribe application forms for examination and licensure and assess and collect fees pursuant to this chapter.
 - (4) Maintain a complete record of all licensed massage therapists and annually prepare a roster of the names and addresses of the licensees. A copy of this roster shall be made available to any person requesting it, upon payment of a fee set by the board in an amount sufficient to cover the costs of its publication and distribution.
 - (5) Provide for the investigation of persons who may be violating this chapter.
 - (6) Adopt and revise rules and regulations pursuant to the Administrative Procedure Act, including the adoption of rules concerning unprofessional conduct.
 - (7) Provide a copy of this chapter to all persons licensed under this chapter and to all applicants for licensure.
 - (8) Adopt rules that require massage therapists to carry professional and general liability insurance with an "A" rated or better insurance carrier in the amount of at least one million dollars (\$1,000,000). The massage therapist shall produce evidence of coverage upon request of the board.
 - (9) Have other powers necessary and proper for the performance of official duties.
- (b) By rule, the board may do any of the following:
- (1) Accept or deny the application of any person applying for licensure as a massage therapist upon an affirmative vote of a majority of the board.
 - (2) Establish criteria for certifying massage therapy instructors.
 - (3) Adopt an annual budget and authorize necessary expenditures from fees and other available

appropriations, provided, in no event shall the expenditures of the board exceed the revenues in any fiscal year.

(4) Adopt a code of ethics.

(5) Provide for the inspection of the business premises of any licensee during normal business hours.

(6) Establish a list of approved massage therapy schools.

(Acts 1996, No. 96-661, p. 1060, § 7.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons  5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-43-8. License requirement; sexually oriented businesses; services for clients who are ill or who have physical dysfunctions. [Historical Notes](#) [References](#)

(a) No person may perform the duties of a massage therapist unless he or she possesses a current license issued pursuant to this chapter.

(b) A licensed massage therapist may not perform massage therapy, whether or not for compensation, for a sexually oriented business.

(c) A licensed massage therapist shall not advertise or offer to perform services outside the scope of his or her expertise, experience, and education for clients who are ill, or those with physical dysfunction(s), unless such services are performed in conjunction with a licensed physician, physical therapist, or chiropractor.

(Acts 1996, No. 96-661, p. 1060, § 8.)

HISTORICAL NOTES

HISTORY


Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons  5(1), 6(1).

Corpus Juris Secundum:

§ 34-43-9. Application for license; educational requirements. [Historical Notes](#) [References](#)

(a) A person desiring to be licensed as a massage therapist shall apply to the board on forms provided by the board. Unless licensed pursuant to subsection (b), applicants for licensure shall submit evidence satisfactory to the board that they have met each of the following requirements:

(1) Satisfactorily completed a minimum of 500 hours of supervised courses of instruction which shall include, but not be limited to, anatomy, pathology, physiology, massage techniques, clinical practices, ethics, health, hygiene, and related subjects. The board shall determine how the 500 hours of instruction shall be broken down. The course of instruction may be provided by a massage therapy school approved by the board. The minimum 500 hours shall consist of the following: 325 hours dedicated to the study of basic massage therapy techniques and clinical practice related modalities; 125 hours dedicated to the study of anatomy, pathology, and physiology; and an additional 50 hours of discretionary related course work, including, but not limited to, hydrotherapy, business practices and professional ethics, health and hygiene, and cardiopulmonary resuscitation and first aid. Beginning January 1, 1998, applicants for licensure shall be required to complete a minimum of 650 hours of instruction. By rule of the board, the minimum 650 hours shall consist of the following: 100 hours of anatomy and physiology to include 35 hours of myology, 15 hours of osteology, 10 hours of circulatory system, and 10 hours of nervous system, with the remaining 30 hours to address other body systems at the discretion of the school; 250 hours of basic massage therapy, the contradistinctions of massage therapy, and related touch therapy modalities, to include a minimum of 50 hours of supervised massage; 50 hours to include business, hydrotherapy, first aid, cardiopulmonary resuscitation, and professional ethics; and 250 hours of electives to be determined by the school. The board may adopt a rule to further increase the minimum number of hours of instruction required for licensure, not to exceed the number of hours recommended by the National Certification Board for Therapeutic Massage and Bodywork. Before performing therapeutic massage on an animal, a massage therapist shall graduate from a nationally approved program and complete at least 100 hours of postgraduate training and education in animal anatomy, pathology, and physiology for the type of animal upon which the massage therapist wishes to perform therapeutic massage.

(2) Passed the National Certification Exam for Therapeutic Massage and Bodywork offered by the National Certification Board for Therapeutic Massage and Bodywork or an examination of equivalent stature that is accredited by the National Committee for Certifying Agencies.

(b) Notwithstanding the requirements in subdivisions (1) and (2) of subsection (a), the board may license an applicant if the applicant is licensed or registered in another state, which, in the opinion of the board, has standards of practice or licensure that are equal to or stricter than the requirements imposed by this chapter.

(c) Notwithstanding any other provision of this section to the contrary, each applicant for licensure shall be a citizen of the United States.

(d) The board may notify each applicant of the acceptance or rejection of his or her application. If the application is rejected, the board shall list the reasons for rejection.

(Acts 1996, No. 96-661, p. 1060, § 9; Act 2000-704, p. 1430, § 1; Act 2001-1103, 4th Sp. Sess., p. 1166, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

Amendment notes:

The 2000 amendment, effective August 1, 2000, in subsection (a), in subdivision (1) deleted "proprietary" preceding "massage therapy school", and in subdivision (4) substituted "offered by the National Certification Board for Therapeutic Massage and Bodywork or an examination of equivalent stature that is accredited by the National Committee for Certifying Agencies" for "or any other nationally or internationally accredited exam approved by the


board prior to January 1, 1998"; and in subsection (b) substituted "may notify" for "shall notify".

The 2001 amendment, effective December 28, 2001, in subsection (a) substituted "Unless licensed pursuant to subsection (b), applicants" for "Applicants", inserted "each of", in subdivision (1) deleted the sentence following "by the school.", added the penultimate sentence, deleted subdivisions (2) and (3), redesignated subdivision (4) as subdivision (2); redesignated subsection (b) as subsection (d); and added subsections (b) and (c).

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons 4.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

§ 34-43-10. Massage therapist examination. [Historical Notes](#) [References](#)

(a) In the event that a massage therapist's examination is required, it shall be conducted at the times and places and under the supervision determined by the board. The board shall notify each applicant of the time and place of the examination.

(b) The board may determine by rule the scope, form, and content of the examination, which shall consist of a written examination and a practical examination or oral interview. The examination shall adequately measure the knowledge of the applicant of the practice of massage therapy. Professional testing services may be utilized.

(c) An applicant shall successfully pass the examination in order to be eligible for licensure as a massage therapist. The board shall notify each applicant in writing of the results of the examination. Any applicant who fails to pass the examination may take the examination again upon application and payment of an additional examination fee. No applicant shall be allowed to take the examination more than twice in a two-year period.

(d) All examinations shall be conducted in a manner so that the applicants are known to the board by number until the examination is completed and the grade determined. A record of each examination shall be filed with the board office and available for inspection for a period of two years following the examination.

(Acts 1996, No. 96-661, p. 1060, § 10; Act 2000-704, p. 1430, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.


Amendment notes:

The 2000 amendment, effective August 1, 2000, in subsection (a) substituted "In the event that a massage therapist's examination is required, it" for "The massage therapist examination", deleted ", provided that the examination shall be given at least twice each calendar year" following "by the board", and substituted "notify each" for "give public notice and shall notify each eligible"; and in subsection (b) substituted "may" for "shall".

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons 4.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-20.

§ 34-43-11. Licensing of establishments. [Historical Notes](#) [References](#)

(a) Establishments shall be licensed by the board. A sexually oriented business may not be licensed as an establishment and shall not operate as an establishment licensed pursuant to this chapter.

(b) Establishments shall employ only licensed massage therapists to perform massage therapy.

(c) The board shall provide by rule, for a fair and reasonable procedure to grant exemptions from the licensure requirement of this section when the applicant can show that the advertising of massage therapy services is incidental to the primary function of his or her business. No such exemption shall be granted to a sexually oriented business.

(d) An establishment license issued pursuant to this chapter is not assignable or transferable.

(e) Subsequent to an official complaint, the board may request a criminal background check of the establishment's licensees through the district attorney of the circuit in which the licensee is located.

(Acts 1996, No. 96-661, p. 1060, § 11; Act 2000-704, p. 1430, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

Amendment notes:

The 2000 amendment, effective August 1, 2000, added subsection (e).


Code Commissioner's Notes

In 1996, the Code Commissioner in the first sentence of subsection (c) deleted a comma after "procedure" to correct a typographical error.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons  5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-43-12. Application forms; issuance of license; display of license. [Historical Notes](#) [References](#)

(a) Applications for licensure or renewal shall be on forms provided by the board and shall be accompanied by the proper fee. The application shall be legible, either printed in black ink or typed. Applications sent by facsimile shall not be accepted. A two-by-two photograph, taken no more than six months earlier, showing a frontal view of the head and shoulders of the applicant, shall be submitted with the application. All documents shall be submitted in English.

(b) The board shall issue a license to each person who qualifies to be a massage therapist and to each qualified massage therapy establishment. To be qualified for a license as a massage therapist the applicant shall successfully pass the examination, pay the examination fee, and pay the license fee. A license grants all professional rights, honors, and privileges relating to the practice of massage therapy.

(c) Each licensed therapist shall display his or her license in the manner specified by the board. Each

establishment shall post its license in plain sight and the license of each massage therapist who practices in the establishment.

(d) A license is the property of the board and shall be surrendered upon demand of the board.
(Acts 1996, No. 96-661, p. 1060, § 12.)

HISTORICAL NOTES

HISTORY


Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons  5(2), 10.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19, 21-24, 53, 57.

§ 34-43-13. License renewal; reinstatement. [Historical Notes](#) [References](#)

(a) Each license shall be renewed biennially, on or before the anniversary date, by forwarding to the board a renewal application accompanied by the renewal fee. Any license not renewed biennially on or before the anniversary date shall expire.

(b) Each licensee, upon application for renewal of a license, shall submit evidence of satisfactory completion of the continuing education requirements contained in Section 34-43-21.

(c) Licenses are valid for two years from the date of issuance. An individual whose license has expired and who has ceased to practice massage therapy for a period of not longer than five years may have his or her license reinstated upon payment of a renewal fee and a late fee and submission of a renewal application and evidence satisfactory to the board that the applicant has fulfilled continuing education requirements and passed the examination.

(d) Subsequent to an official complaint, the board may request a criminal background check of the licensee through the district attorney of the circuit in which the licensee is located.

(Acts 1996, No. 96-661, p. 1060, § 13; Act 2000-704, p. 1430, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

Amendment notes:

The 2000 amendment, effective August 1, 2000, added subsection (d).

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons  5(2).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19, 21-24.

§ 34-43-14. Fees; Alabama Board of Massage Therapy Fund. [Historical Notes](#) [References](#)

(a) By rule, the board shall initially assess and collect the following fees not to exceed:

(1) One hundred sixty dollars (\$160) for the examination.

(2) One hundred dollars (\$100) for the initial massage therapist license which shall be issued for one year. The initial licensing fee shall be assessed in the month when the applicant is notified that the license has been approved.

(3) One hundred dollars (\$100) for all biennial license renewals postmarked or received at the office of the board by the date in which the license expires.

(4) Twenty-five dollars (\$25) for the initial application for licensure or the resubmission of the initial application.

(5) One hundred dollars (\$100) for the initial establishment license.

(6) Fifty dollars (\$50) for the biennial renewal of the establishment license.

(7) Fifty dollars (\$50) for the initial registration as a massage therapy school in this state.

(8) Ten dollars (\$10) to renew the registration as a massage therapy school.

(9) Ten dollars (\$10) to register as a massage therapy instructor in this state. This is a one-time fee and does not have to be renewed.

(10) Seventy-five dollars (\$75) to reactivate an inactive license.

(11) Twenty-five dollars (\$25) shall be added to all license fees not post-marked or received by the board before the expiration date of the license.

(12) Fifteen dollars (\$15) to verify a license.

(13) Ten dollars (\$10) for a duplicate license certificate or a name change on a license certificate. The board may issue a duplicate certificate only after receiving a sworn letter from the massage therapist that the original certificate was lost, stolen, or destroyed. The records of the board shall reflect that a duplicate certificate was issued.

(b) Necessary administrative fees may be charged by the board, including, but not limited to, reasonable costs for copying, labels, and lists. Examination and license fees may be adjusted as the board shall deem appropriate.

(c) There is hereby established a separate special revenue trust fund in the State Treasury to be known as the Alabama Board of Massage Therapy Fund. All receipts collected by the board under the provisions of this chapter are to be deposited in this fund and used only to carry out the provisions of this chapter. Such receipts shall be disbursed only by warrant of the state Comptroller, upon itemized vouchers approved by the chair of the board; provided that no funds shall be withdrawn except as budgeted and allotted according to the provisions of Sections 41-4-80 to 41-4-96, inclusive, 41-19-1, and 41-19-12, as amended, and only in amounts as stipulated in the general appropriations bill or other appropriations bills.

(Acts 1996, No. 96-661, p. 1060, § 14.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons 5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-43-15. Suspension and revocation of license. [Historical Notes](#) [References](#)

(a) The board may suspend, revoke, or refuse to issue or renew a license or impose a civil penalty after notice and opportunity for a hearing pursuant to the Administrative Procedure Act, upon proof of any of the following:

(1) The license was obtained by means of fraud, misrepresentation, or concealment of material facts, including making a false statement on an application or any other document required by the board for licensure.

(2) The licensee sold or bartered or offered to sell or barter a license for a massage therapist or a massage therapy establishment.

(3) The licensee has engaged in unprofessional conduct that has endangered or is likely to endanger the health, safety, and welfare of the public, as defined by the rules of the board.

(4) The licensee has been convicted of a felony or of any crime arising out of or connected with the practice of massage therapy.

(5) The licensee has violated or aided and abetted in the violation of this chapter.

(6) The licensee is adjudicated as mentally incompetent by a court of law.

(7) The licensee uses controlled substances or habitually and excessively uses alcohol.

(8) The licensee engaged in false, deceptive, or misleading advertising.

(9) The licensee had a license revoked, suspended, or denied in any other territory or jurisdiction of the United States for any act described in this section.

(b) Any person who has been convicted of, or entered a plea of nolo contendere to, a crime or offense involving prostitution or other sexual offenses is ineligible to hold a license as a massage therapist for a period of at least three years after the entry of the conviction or plea. The board retains the right to revoke a license indefinitely if the licensee is proven guilty of a crime or of sexual misconduct. Reinstatement of licensure is contingent upon proof of weekly counseling by a licensed professional counselor.

(c) Any person who has been convicted of, or entered a plea of nolo contendere to, an offense involving prostitution or any other type of sexual offense may not receive a license for a massage therapy establishment for a period of three years after the date of conviction or entry of the plea. The board shall revoke the establishment license of any establishment which the board determines is a sexually oriented business. The board may revoke an establishment license if a person is convicted of, or enters a plea of nolo contendere to, any crime involving prostitution or any other sexual offense against a client which occurred on the premises of the establishment.

(d)(1) Upon finding a person, governed by this chapter, performing massage therapy without having obtained a license, the board may do any of the following:

a. Impose an administrative fine of not more than ten thousand dollars (\$10,000).

b. Issue a cease and desist order.

c. Petition the circuit court of the county where the act occurred to enforce the cease and desist order and collect the assessed fine.

(2) Any person aggrieved by any adverse action of the board must appeal the action to the Circuit Court of Montgomery County in accordance with the Alabama Administrative Procedure Act.
(Acts 1996, No. 96-661, p. 1060, § 15; Act 2000-704, p. 1430, § 1.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become

operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

Amendment notes:

The 2000 amendment, effective August 1, 2000, added subsection (d).

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons  11.

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers § 35.

Law Review Articles:

Collateral sanctions and civil disabilities: The secret barrier to true sentencing reform for legislatures and sentencing commissions. 55 Ala.L.Rev. 375 (2004).

§ 34-43-16. Use of words "massage" or "bodywork" or other advertising descriptions by non-licensed persons. [Historical Notes](#) [References](#)

A person who does not hold a license as a massage therapist, physical therapist, chiropractor, or athletic trainer, or a license for an establishment, shall not use the words "massage" or "bodywork" on any sign or other form of advertising describing services performed by the person or at the establishment. Any advertisement by a massage therapist or establishment shall contain the license number of the therapist or establishment. Under no circumstances may a sexually oriented business hold itself out as offering massage therapy services. (Acts 1996, No. 96-661, p. 1060, § 16.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons  6(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 2-3, 5, 11, 14-15, 28.

§ 34-43-17. Criminal penalties. [Historical Notes](#) [References](#)

Any person who violates this chapter shall be guilty of a Class C misdemeanor. (Acts 1996, No. 96-661, p. 1060, § 17.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons 6(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 2-3, 5, 11, 14-15, 28.

§ 34-43-18. Injunction; civil penalty. [Historical Notes](#) [References](#)

(a) In addition to the criminal penalties prescribed by this chapter, the board may seek an injunction against any person or establishment in violation of this chapter.

(b) In an action for an injunction, the board may demand and recover a civil penalty of fifty dollars (\$50) per day for each violation, reasonable attorney fees, and court costs.
(Acts 1996, No. 96-661, p. 1060, § 18.)

HISTORICAL NOTES

HISTORY


Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Injunction 89(5).

Corpus Juris Secundum:

C.J.S. Injunctions §§ 133-135.

§ 34-43-19. Construction with other regulations. [Historical Notes](#)

(a) Except as otherwise provided in subsection (b), this chapter shall supersede any regulation adopted by a political subdivision of the state related to the licensing or regulation of massage therapists and massage therapy establishments.

(b) This section shall not affect:

(1) Local regulations relating to zoning requirements or occupational license taxes pertaining to massage therapists and massage therapy establishments.

(2) Local regulations that do not relate to the practice of massage therapy by qualified persons.

(c) A county, or a municipality within its jurisdiction, may regulate persons licensed pursuant to this chapter. Regulation shall be consistent with this chapter. This section shall not be construed to prohibit a county or municipality from regulating persons not licensed pursuant to this chapter.

(Acts 1996, No. 96-661, p. 360, § 19.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

§ 34-43-20. Massage therapy schools; instructors. [Historical Notes](#) [References](#)

(a) To be approved by the board, a massage therapy school shall meet the following requirements:

(1) File a completed application prescribed by the board with the board and pay a registration fee as specified in Section 34-43-14.

(2) Provide documentation of a curriculum which includes a minimum number of required hours of instruction in the subjects required pursuant to Section 34-43-9.

(3) Register annually with the board by filing a renewal form accompanied with the renewal fee pursuant to Section 34-43-14, and submit a current curriculum and a list of instructors.

(b) Every instructor teaching course work titled massage therapy at a board approved school located in Alabama shall be licensed in Alabama as a massage therapist and registered as a massage therapy instructor. Instructors who are not teaching massage therapy do not need to be registered. Any adjunct instructors shall be dually licensed in the state where they reside, be nationally certified, or both.

(c) The board shall register as a massage therapy instructor any applicant who meets all of the following requirements:

(1) Is currently licensed as a massage therapist in Alabama.

(2) Has filed a completed application prescribed by the board and paid a one-time application fee pursuant to Section 34-43-14.

(3) Documents two years of experience in the practice of massage therapy. The documentation may be considered by the board on a case-by-case basis.

(Acts 1996, No. 96-661, p. 360, § 20.)

HISTORICAL NOTES

HISTORY


Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons  5(1).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 12-13, 18.

§ 34-43-21. Continuing education. [Historical Notes](#) [References](#)

(a) Every massage therapist licensed pursuant to this chapter shall be required to complete 16 hours of continuing education as a condition for renewing his or her license. The continuing education courses shall be offered by providers approved by the board. The courses shall have been completed within the 24 months preceding the date renewal is due. Hours in excess of the total number required may not be carried over to future renewals. The continuing education requirements shall not apply to a massage therapist within the biennium when the massage therapist is first licensed, but shall apply to licensees every biennium thereafter. The board may accept for compliance with the continuing education requirement any of the following:

(1) Courses or providers which contribute directly to the massage therapy education of the licensee.

(2) Courses, seminars, workshops, and classes in areas related to the practice of massage therapy such as: Massage, bodywork, allied health care fields (including psychology and medicine), anatomy and physiology, business, insurance, movement therapy, stress management, yoga, CPR, and advanced first aid.

(3) Courses of study offered by registered massage therapy schools in Alabama, or by massage therapy instructors registered with the board, or by any national organization in the field of massage therapy or related touch therapy field.

(b) Up to 25 percent, or four hours of credit, of the required number of hours of continuing education may be earned in each of the following areas:

(1) Teaching a qualifying class, course, seminar, or workshop.

(2) Publishing an article in the field relating to massage therapy.

(3) Speaking on the subject of massage therapy.

(4) Being a panelist discussing massage therapy.

(5) Participating in a personal growth class.

(6) Two hours of professional ethics.

(c) Each of the areas listed in subsection (b) may be used for up to four hours of credit depending on the actual contact hours. One continuing education credit is defined as no less than 50 uninterrupted minutes of learning, except that publishing an article will automatically count for four hours. Continuing education credit may not be awarded for programs which do not relate to subjects listed in this section, or for repeated courses submitted the previous biennium, except for courses listed in subsection (b). The board may select, in a random manner, license renewal applications for audit of continuing education credit. Each licensee shall be responsible for maintaining in his or her personal files the certificates or records of credit from continuing education programs received from approved program providers. Each licensee selected for audit shall be required to produce documentation of attendance at those continuing education activities listed on his or her renewal application.

(1) The board shall send to each licensee selected for audit, a notice of audit. The licensee shall provide satisfactory documentation of attendance at, or participation in, the approved continuing education programs listed in the renewal application.

(2) The licensee shall ascertain that the continuing education program is approved by the board.

(d) The board shall evaluate applications from all providers of continuing education programs, including massage therapy schools and instructors, in order to determine if approval shall be granted or denied.

(1) The provider or licensee shall submit to the board an application on a form provided by the board. Only applications which are complete will be considered.

(2) The provider or licensee shall submit a complete application to the board at least 60 days prior to the date on which the training event is to be given to gain approval before the program is presented.

(e) The board is subject to the Alabama Sunset Law of 1981, and is classified as an enumerated agency pursuant to Section 41-20-3. The board shall automatically terminate on October 1, 2007, and every four years thereafter, unless continued pursuant to the Alabama Sunset Law.

(Acts 1996, No. 96-661, p. 1060, § 21; Act 2000-704, p. 1430, § 1; Act 2004-76, p. 101, § 3.)

HISTORICAL NOTES

HISTORY

Effective date:

The act which added this section became effective May 17, 1996. As to provision that such act shall become operative on January 1, 1997, see Code Commissioner's Note preceding Section 34-43-1.

Amendment notes:


The 2000 amendment, effective August 1, 2000, in subsection (a), in subdivision (3) substituted "board" for "State of Alabama"; in subsection (b) deleted subdivision (5) and redesignated subdivisions (6) and (7) as subdivisions (5) and (6), respectively; and added subsection (e).

The 2004 amendment, effective April 1, 2004, rewrote subsection (e).

REFERENCES

LIBRARY REFERENCES

American Digest System:

Physicians and Surgeons  4, 5(2).

Corpus Juris Secundum:

C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 19-24.

SB402 (2007 Legislation)

1 89906-1
2 By Senator Little (Z)
3 RFD: Finance and Taxation General Fund
4 First Read: 11-APR-07

SYNOPSIS: Under existing law, the Alabama Massage Therapy Licensure Act governs the practice of massage therapy in this state.

This bill would delete the requirement that a massage therapy school be accredited by the State Department of Education.

This bill would delete any reference to a temporary permit to practice massage therapy.

This bill would delete antiquated language and the requirement that appointees to the Alabama Board of Massage Therapy be confirmed by the Senate.

This bill would provide the board with compensation.

This bill would change the name of the executive secretary to executive director.

This bill would list reasons for excused absentees from board meetings.

This bill would remove the requirements that the oath of office of board members be filed with

1 the Governor and that the Governor issue
2 certificates of appointment to board members.

3 This bill would increase the minimum hours
4 of supervised course instruction for licensure.

5 This bill would require that an applicant
6 for licensure be 18 years of age with a high school
7 diploma or equivalent and remove the requirement
8 that an applicant be a United States citizen.

9 This bill would authorize the board to
10 assess and collect certain fees.

11 This bill would increase the discretion of
12 the board to provide for licensure to
13 establishments. This bill would expand the board's
14 authority to revoke or suspend licenses.

15 Under existing law, violations of this
16 chapter are a Class C misdemeanor.

17 This bill would change the penalties to a
18 Class A misdemeanor.

19
20 A BILL

21 TO BE ENTITLED

22 AN ACT

23
24 Relating to the Alabama Massage Therapy Licensure
25 Act; to amend Sections 34-43-3, 34-43-5, 34-43-6, 34-43-7,
26 34-43-9, 34-43-10, 34-43-11, 34-43-14, 34-43-15, and 34-43-17,
27 Code of Alabama 1975, to delete the requirement that a massage

1 therapy school be accredited by the State Department of
2 Education; to delete any reference to a temporary permit to
3 practice massage therapy; to expand the definition of
4 therapeutic massage and extend exemptions to the act; to
5 delete antiquated language and the requirement that board
6 appointees be confirmed by the Senate; to provide the board
7 with compensation; to change the name of the executive
8 secretary to executive director; to provide excuse for
9 absences from board meetings; to delete requirements that the
10 oath of office of board members be filed with the Governor and
11 that certificates of appointments be issued; to increase the
12 minimum hours of supervised course instruction for licensure;
13 to require that applicants for licensure be 18 years old with
14 a high school diploma or equivalent; to authorize the board to
15 assess and collect certain fees; to increase the discretion of
16 the board to provide for licensure to establishments; to
17 expand the board's authority to revoke or suspend licenses; to
18 change the penalty violating the act from a Class C
19 misdemeanor to a Class A misdemeanor.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Sections 34-43-3, 34-43-5, 34-43-6,
22 34-43-7, 34-43-9, 34-43-10, 34-43-11, 34-43-14, 34-43-15, and
23 34-43-17 of the Code of Alabama 1975, are amended to read as
24 follows:

25 "§34-43-3.

26 "For purposes of this chapter, the following terms
27 shall have the following meanings:

1 "(1) ADVERTISE. Distributing a card, flier, sign, or
2 device to any person or organization, or allowing any sign or
3 marking on any building, radio, television, or by advertising
4 by any other means designed to attract public attention.

5 "(2) BOARD. The Alabama Board of Massage Therapy
6 created pursuant to this chapter.

7 "(3) BOARD-APPROVED MASSAGE THERAPY SCHOOL. A school
8 where massage therapy is taught which is one of the following:

9 "a. If located in Alabama is ~~accredited by the~~
10 ~~Department of Education and~~ approved by the board as meeting
11 the minimum established standards of training and curriculum
12 as determined by the board.

13 "b. If located outside of Alabama is recognized by
14 the board and by a regionally recognized professional
15 accrediting body.

16 "c.- ~~Is a postgraduate training institute accredited~~
17 by the Commission on Accreditation for Massage Therapy.

18 "(4) ESTABLISHMENT. A site, premises, or business
19 where massage therapy is practiced by a licensed massage
20 therapist.

21 "(5) EXAMINATION. A National ~~Certification For~~
22 Examination in Therapeutic Massage and Bodywork ~~Examination~~
23 administered by an independent agency or another nationally or
24 internationally accredited exam administered by an independent
25 agency per approval of the board. ~~The examination will be~~
2 6 ~~accredited by the National Committee for Certifying Agencies.~~

1 The board retains the right to administer a written, oral, or
2 practical examination.

3 "(6) LICENSE. The credential issued by the board
4 which allows the licensee to engage in the safe and ethical
5 practice of massage therapy.

6 "(7) LICENSURE. The procedure by which an applicant
7 applies to the board for approval to practice massage therapy
8 or to operate an establishment.

9 "(7)(8) MESSAGE THERAPIST. A person licensed
10 pursuant to this chapter who practices or administers massage
11 therapy or touch therapy modalities to a patron for
12 compensation.

13 "(8)(9) MESSAGE THERAPY INSTRUCTOR. A licensed
14 massage therapist approved by the board to teach the practice
15 of massage therapy.

16 "(9)(10) PERSON. Any individual, firm, corporation,
17 partnership, organization, association, or other legal entity.

18 "~~(10)~~ (11) SEXUALLY ORIENTED BUSINESS. A sex parlor,
19 massage parlor, nude studio, modeling studio, love parlor,
20 adult bookstore, adult movie theater, adult video arcade,
21 adult motel, or other commercial enterprise which has as i ts
22 ~~primary~~ any business the offering for sale, rent, or exhibit,
23 or the exhibit of, items or services intended to provide
24 sexual stimulation or sexual gratification to the customer.

25 "~~(11)~~ (12) STUDENT OF MESSAGE THERAPY. Any person
26 currently enrolled in an Alabama massage therapy school
27 program approved by the board.

1 "~~(12) TEMPORARY PERMIT. A temporary permit issued at~~
2 ~~the request of a massage therapist who is qualified according~~
3 ~~to the Alabama massage therapy law prior to approval by the~~
4 ~~board and not to exceed six months.~~

5 "(13) THERAPEUTIC MASSAGE AND RELATED TOUCH THERAPY
6 MODALITIES. The mobilization of the soft tissue which may
7 include skin, fascia, tendons, ligaments, and muscles, for the
8 purpose of establishing and maintaining good physical
9 condition. The term shall include effleurage, petrissage,
10 tapotement, compression, vibration, stretching, heliotherapy,
11 superficial hot and cold applications, topical applications,
12 or other therapy which involves movement either by hand,
13 forearm, elbow, or foot, for the purpose of therapeutic
14 massage. Massage therapy may include the external application
15 and use of herbal or chemical preparations and lubricants such
16 as salts, powders, liquids, nonprescription creams, mechanical
17 devises such as T-bars, thumpers, body support systems, heat
18 lamps, hot and cold packs, salt glow, steam cabinet baths or
19 hydrotherapy. The term includes any massage, ~~movement therapy,~~
20 massage technology, myotherapy, or massotherapy, ~~- oriental~~
21 ~~massage techniques, structural integration, or polarity~~
22 ~~therapy.~~ The term shall not include directed movement therapy,
23 including, but not limited to, the Feldenkrais method of
24 somatic education, the Trager approach to movement education,
25 the Rosen method, and body-mind centering; energy field work,
2 6 including, but not limited to, Polarity Therapy, Reiki,
2 7 Ayurveda, Touch for Health, or Jin Shin Do, provided these

1 services are not designated or implied to be massage or
2 massage therapy. The term shall not include laser therapy,
3 microwave, injection therapy, manipulation of the joints, or
4 any diagnosis or treatment of an illness that normally
5 involves the practice of medicine, chiropractic, physical
6 therapy, podiatry, nursing, occupational therapy, veterinary,
7 acupuncture, osteopathy, orthopedics, hypnosis, or
8 naturopathics.

9 "§34-43-5.

10 "(a) The following persons shall be exempt from this
11 chapter:

12 "(1) A student of massage therapy who is rendering
13 massage therapy services under the supervision of a licensed
14 massage therapy instructor, or any other supervisory
15 arrangement recognized and approved by the board,~~including,~~
16 ~~but not limited to, a temporary permit.~~ The student shall be
17 designated by title clearly indicating the training status of
18 the student.

19 "(2) Qualified members of other professions who are
20 licensed and regulated under Alabama law while they are in the
21 course of rendering services within the scope of their license
22 or regulation, provided that they do not represent themselves
23 as massage therapists.

24 "(3) A person giving massages to his or her
25 immediate family.

26 "(4) Visiting massage therapy instructors from
27 another state, territory, or country teaching massage therapy,

1 provided that the massage therapy instructor is licensed or
2 registered as required in his or her place of residence.
3 Visiting massage instructors teaching continuing education
4 courses may teach in the state up to 100 hours per year
5 without an Alabama license. One hundred hours of continuing
6 education instruction or more shall require licensure.

7 "(5) Members of the Massage Emergency Rescue Team
8 (MERT) or any other nationally or internationally recognized
9 disaster relief association who practice massage therapy in
10 the state only during a time declared by the Governor to be a
11 city, county, or state emergency. These therapists may work in
12 the state for a period of time approved by the board.

13 "(6) Native American healers using traditional
14 healing practices,~~— provided, —however,—~~ Native American healers
15 who use these practices but apply for a license pursuant to
16 this chapter shall comply with all licensure requirements.

17 "(7) A person acting under the supervision of a
18 physician, a physical therapist, or a chiropractor within the
19 scope of their license or regulation, provided that they do
20 not represent themselves as massage therapists.

21 "(8) Persons who restrict their manipulation of the
22 soft tissue of the human body to the hands, feet, or ears and
23 do not hold themselves out to be massage therapists or to do
24 massage or massage therapy.

25 "(9) Persons using methods which involve only
26 techniques which are specifically intended to affect the human
27 energy fields or systems, without intentional soft tissue

1 manipulation, including, but not limited to, Polarity Therapy,
2 Reiki, Ayurveda, Touch for Health or Jin Shin Do, in which
3 their services are not designated or implied to be massage or
4 massage therapy.

5 "(10) Persons who use touch, words, and directed
6 movement to deepen awareness of existing patterns of movement
7 in the body as well as to suggest new possibilities of
8 movement while engaged in the scope of practice of a
9 profession with established standards and ethics, provided
10 that their services are not designated or implied to be
11 massage or massage therapy and involve only incidental contact
12 or manipulation of soft tissue. These practices include, but
13 are not limited to, the Feldenkrais method of somatic
14 education, the Trager approach to movement education, the
15 Rosen method, and body-mind centering.

16 "(b) Nothing in this chapter shall be construed to
17 permit massage therapists licensed under this chapter to
18 administer, dispense, or prescribe drugs, or engage in the
19 practice of medicine in any manner, including, but not limited
20 to, diagnosing or prescribing drugs for mental, emotional, or
21 physical diseases, illnesses, or injuries.

22 "§34-43-6.

23 "(a) There is created the Alabama Board of Massage
24 Therapy. The purpose of the board is to protect the health,
25 safety, and welfare of the public by ensuring that licensed
26 massage therapists, massage therapy schools, and massage
27 therapy instructors meet prescribed standards of education,

1 competency, and practice. To accomplish this mission, the
2 board shall establish standards pursuant to this chapter to
3 complete all board functions in a timely and effective manner
4 and to provide open and immediate access to all relevant
5 public information. The board shall communicate its
6 responsibilities and services to the public as part of its
7 consumer protection duties. The board shall develop and
8 implement a long range plan to ensure effective regulation and
9 consumer protection.

10 "(b) The board shall consist of seven members
11 appointed by the Governor, ~~subject to confirmation by the~~
12 ~~Senate~~. No member of the board shall serve more than two full
13 consecutive terms of four years expiring September 30. The
14 ~~members initially appointed to the board shall be appointed~~
15 ~~not later than July 16, 1996~~. Five of the members ~~initially~~
16 ~~appointed to the board shall have been actively engaged in the~~
17 ~~practice of massage therapy for not less than three~~
18 ~~consecutive years prior to the date of their appointment to~~
19 the board. Successor members to these initial five appointees
20 shall be licensees of the board. Two members shall be public
21 members who shall not be licensed, nor have been licensed in
22 the past, and shall not have any direct financial interest in
23 the massage therapy profession. Each board member shall be a
24 high school graduate or shall have received a graduate
25 equivalency diploma. Each board member shall be selected upon
26 personal merit and qualifications, not per membership or
27 affiliation with an association. Each board member shall be a

1 citizen of the United States and a resident of this state for
2 two years immediately preceding the appointment. Minority
3 representation on the board shall reflect the racial diversity
4 of the state.

5 (c) Of the initial seven appointees to the board,
6 three members shall be appointed for terms ending September
7 ³⁰, ~~1997, and four members shall be appointed for terms ending~~
8 September 30^u, 1999 . Thereafter, successors shall be appointed
9 for terms of four years, each term expiring on September 30^U .

10 "~~(d)~~(c) Vacancies on the board occurring prior to
11 the expiration of a term shall be filled by the Governor
12 within 30 days of the vacancy to serve for the remainder of
13 the unexpired term. Each member of the board shall serve until
14 his or her successor has been duly appointed and qualified.

15 "~~(e)~~ (d) ~~At the first meeting, and annually~~
16 ~~thereafter in the month of October, the~~ The board shall elect
17 annually a chair and vice chair from its membership.

18 "(f)(e) The board shall hold its first meeting
19 within 30 days after the initial members are appointed. The
20 board shall hold meetings during the year as it determines
21 necessary, two of which shall be the biannual meetings for the
22 purpose of reviewing license applications. Additional meetings
23 may be held at the discretion of the chair or upon written
24 request of any three members of the board. A quorum of the
25 board shall be a majority of the current appointed board
2 6 members.

1 "~~(g)~~(f) Board members shall ~~not receive compensation~~
2 for their services, but shall receive the same per diem and
3 allowance as provided to state employees for each day the
4 ~~board meets and conducts business~~ receive one hundred dollars
5 (\$100) per day for attending sessions of the board or its
6 committees and, in addition, shall be reimbursed for such
7 necessary travel expenses as are paid to state employees, to
8 be paid from fees collected.

9 "~~(h)~~(g) The board shall promulgate the rules
10 necessary to implement this chapter pursuant to the
11 Administrative Procedure Act.

12 "~~(i)~~(h) The board may employ, and at its pleasure
13 discharge, an executive ~~secretary~~ director and other officers
14 and employees which may be necessary, including an attorney,
15 to implement this chapter. The board shall also outline the
16 duties and fix the compensation and expense allowances of the
17 employees.

18 "~~(j)~~(i) An affirmative vote of a majority of the
19 members of the board shall be required to grant, suspend, or
20 revoke a license to practice massage therapy or a license to
21 operate a massage therapy establishment.

22 "~~(k)~~(j) The board shall be financed only from income
23 accruing to it the board from fees, licenses, other charges
24 and funds collected by it the board, and any monies that are
25 appropriated to it by the Legislature.

26 "~~(l)~~(k) Each board member shall be accountable to
27 the Governor for the proper performance of his or her duties

1 as a member of the board. The board shall report to the
2 Governor annually and at other times as requested by the
3 Governor. The Governor shall investigate any complaints or
4 unfavorable reports concerning the actions of the board and
5 take appropriate action thereon, including removal of any
6 board member for misfeasance, malfeasance, neglect of duty,
7 commission of a felony, incompetence, or permanent inability
8 to perform official duties. A board member may be removed at
9 the request of the board after failing to attend two
10 consecutive properly noticed meetings. Excused absences of a
11 board member are absences due to the following situations: (1)
12 Medical problems of a board member or a board member's family
13 including, but not limited to illness, surgery, care, and
14 hospitalization; (2) death of a family member and attendance
15 at the family member's funeral; and (3) any conflict,
16 extraordinary circumstance, or event approved by the chair of
17 the board.

18 "~~(m)~~(1) Members of the board are immune from
19 liability for all good faith acts performed in the execution
20 of their duties as members of the board.

21 "~~(n)~~(m) Appointees to the board shall take the
22 constitutional oath of office and file it in the office ~~of the~~
23 ~~Governor before undertaking any duties as a board member. Upon~~
24 receiving the oath, the Governor shall issue a certificate of
25 appointment to each appointee .

26 "§34-43-7.

1 "(a) By rule, the board shall make provisions to do
2 all of the following:

3 "(1) Examine and qualify for examination applicants
4 for licensure and issue a license to each successful
5 applicant.

6 "(2) Adopt a seal, which shall be affixed to all
7 licenses issued by the board.

8 "(3) Prescribe application forms for examination and
9 licensure and assess and collect fees pursuant to this
10 chapter.

11 "(4) Maintain a complete record of all licensed
12 massage therapists and annually prepare a roster of the names
13 and addresses of the licensees. A copy of this roster shall
14 be made available to any person requesting it, upon payment of
15 a fee set by the board in an amount sufficient to cover the
16 costs of its publication and distribution.

17 "(5) Provide for the investigation of persons who
18 may be violating this chapter.

19 "(6) Adopt and revise rules and regulations pursuant
20 to the Administrative Procedure Act, including the adoption of
21 rules concerning unprofessional conduct.

22 "(7) Provide a copy of this chapter to all persons
23 licensed under this chapter and to all applicants for
24 licensure.

25 "(8) Adopt rules that require massage therapists to
26 carry professional and general liability insurance with an "A"
27 rated or better insurance carrier in the amount of at least

1 one million dollars (\$1,000,000) . The massage therapist shall
2 produce evidence of coverage upon request of the board.

3 "(9) Have other powers necessary and proper for the
4 performance of official duties.

5 "(b) By rule, the board may do any of the following:

6 "(1) Accept or deny the application of any person
7 applying for licensure as a massage therapist upon an
8 affirmative vote of a majority of the board.

9 "(2) Establish criteria for certifying massage
10 therapy instructors.

11 "(3) Adopt an annual budget and authorize necessary
12 expenditures from fees and other available appropriations,
13 provided, in no event shall the expenditures of the board
14 exceed the revenues in any fiscal year.

15 "(4) Adopt a code of ethics.

16 "(5) Provide for the inspection of the business
17 premises of any licensee individual or business holding itself
18 out as licensed by the board, including, but not limited to,
19 advertising, as performing massage therapy services during
20 normal business hours.

21 "(6) Establish a list of approved massage therapy
22 schools.

23 "§34-43-9.

24 "(a) A person desiring to be licensed as a massage
25 therapist shall apply to the board on forms provided by the
26 board. Unless licensed pursuant to subsection (b), applicants

1 for licensure shall submit evidence satisfactory to the board
2 that they have met each of the following requirements:

3 "(1) Satisfactorily completed a minimum of ~~500~~ 650
4 hours of supervised courses of instruction ~~which shall~~
5 ~~include, but not be limited to, anatomy, pathology,~~
6 ~~physiology, massage techniques, clinical practices, ethics,~~
7 ~~health, hygiene, and related subjects. The board shall~~
8 ~~determine how the 500 hours of instruction shall be broken~~
9 ~~down. The course of instruction may be provided by a massage~~
10 ~~therapy school approved by the board. The minimum 500 hours~~
11 ~~shall consist of the following : 325 hours dedicated to the~~
12 ~~study of basic massage therapy techniques and clinical~~
13 ~~practice related modalities; 125 hours dedicated to the study~~
14 ~~of anatomy, pathology, and physiology; and an additional 50~~
15 ~~hours of discretionary related course work, including, but not~~
16 ~~limited to, hydrotherapy, business practices and professional~~
17 ~~ethics, health and hygiene, and cardiopulmonary resuscitation~~
18 ~~and first aid. Beginning January 1, 1998, applicants for~~
19 ~~licensure shall be required to complete a minimum of 650 hours~~
20 ~~of instruction. By rule of the board, the minimum 650 hours~~
21 ~~shall consist of the following:- 100 hours of anatomy and~~
22 ~~physiology to include 35 hours of myology, 15 hours of~~
23 ~~osteology, 10 hours of circulatory system, and 10 hours of~~
24 ~~nervous system, with the remaining 30 hours to address other~~
25 ~~body systems at the discretion of the school ; 250 hours of~~
26 ~~basic massage therapy, the contradistinctions of massage~~
27 ~~therapy, and related touch therapy modalities, to include a~~

1 ~~minimum of 50 hours of supervised massage; 50 hours to include~~
2 ~~business, hydrotherapy, first aid, cardiopulmonary~~
3 ~~resuscitation, and professional ethics; and 250 hours of~~
4 ~~electives to be determined by the school~~ the content of which
5 shall be determined by the rule of the board. The board may
6 adopt a rule to further increase the minimum number of hours
7 of instruction required for licensure, not to exceed the
8 number of hours recommended by the National Certification
9 Board for Therapeutic Massage and Bodywork. Before performing
10 therapeutic massage on an animal, a massage therapist shall
11 graduate from a nationally approved program and complete at
12 least 100 hours of postgraduate training and education in
13 animal anatomy, pathology, and physiology for the type of
14 animal upon which the massage therapist wishes to perform
15 therapeutic massage.

16 "(2) Passed the National Certification Exam for
17 Therapeutic Massage and Bodywork offered by the National
18 Certification Board for Therapeutic Massage and Bodywork or an
19 examination of equivalent stature that is accredited by the
20 National Committee for Certifying Agencies.

21 "(b) Notwithstanding the requirements in
22 subdivisions (1) and (2) of subsection (a), the board may
23 license an applicant if the applicant is licensed or
24 registered in another state, which, in the opinion of the
25 board, has standards of practice or licensure that are equal
26 to or stricter than the requirements imposed by this chapter.

1 "(c) Notwithstanding any other provision of this
2 section to the contrary, each applicant for licensure shall be
3 18 years of age, with a high school diploma or graduate
4 equivalency diploma ~~a citizen of the United States.~~

5 "(d) The board may notify each applicant of the
6 acceptance or rejection of his or her application. If the
7 application is rejected, the board shall list the reasons for
8 rejection.

9 "§34-43-10.

10 "(a) In the event that a massage therapist's
11 examination is ~~required~~ administered by the board, it shall be
12 conducted at the times and places and under the supervision
13 determined by the board. The board shall notify each applicant
14 of the time and place of the examination.

15 "(b) The board may determine by rule the scope,
16 form, and content of the examination, which shall consist of a
17 written examination and a practical examination or oral
18 interview. The examination shall adequately measure the
19 knowledge of the applicant of the practice of massage therapy.
20 Professional testing services may be utilized.

21 "(c) An applicant shall successfully pass the
22 examination in order to be eligible for licensure as a massage
23 therapist. The board shall notify each applicant in writing of
24 the results of the examination. Any applicant who fails to
25 pass the examination may take the examination again upon
26 application and payment of an additional examination fee. No

1 applicant shall be allowed to take the examination more than
2 twice in a two-year period.

3 "(d) All examinations shall be conducted in a manner
4 so that the applicants are known to the board by number until
5 the examination is completed and the grade determined. A
6 record of each examination shall be filed with the board
7 office and available for inspection for a period of two years
8 following the examination.

9 "§34-43-11.

10 "(a) Establishments shall be licensed by the board.
11 A sexually oriented business may not be licensed as an
12 establishment and shall not operate as an establishment
13 licensed pursuant to this chapter.

14 "(b) Establishments shall employ only licensed
15 massage therapists to perform massage therapy.

16 "(c) The board shall provide by rule, for a fair and
17 reasonable procedure to grant exemptions from the licensure
18 requirement of this section ~~when the applicant can show that~~
19 ~~the advertising of massage therapy services is incidental to~~
20 ~~the primary function of his or her business. No such exemption~~
21 shall be granted to a sexually oriented business.

22 "(d) The board shall have the power to revoke or
23 suspend the license of a massage therapy establishment license
24 under this chapter, or to deny subsequent licensure of such
25 establishment, in either of the following cases:

26 "(1) Upon proof that a license has been obtained by
27 fraud or misrepresentation.

1 "(2) Upon proof that the holder of a license is
2 guilty of fraud or deceit or of gross negligence,
3 incompetency, or misconduct in the operation of the
4 establishment so licensed.

5 "~~(d)~~(e) An establishment license issued pursuant to
6 this chapter is not assignable or transferable.

7 "~~(e)~~(f) Subsequent to an official complaint, the
8 board may request a criminal background check of the
9 ~~establishment's~~ licensees of an establishment through the
10 district attorney of the circuit in which the licensee is
11 located.

12 "(g) Renewal of license registration for massage
13 therapy establishments shall be accomplished pursuant to rules
14 adopted by the board. The board is further authorized to adopt
15 rules governing delinquent renewal of licenses and may impose
16 penalty fees for delinquent renewal.

17 "§34-43-14.

18 "(a) By rule, the board shall ~~initially~~ assess and
19 collect the ~~following~~ reasonable fees ~~not to exceed necessary~~
20 to recover the costs of operation for all of the following:

21 "~~(1) One hundred sixty dollars -(\$160)-~~ for For the
22 examination.

23 "~~(2) One hundred dollars -(\$100)-~~ for the initial
24 ~~massage therapist license which shall be issued for one year~~
25 ~~The initial licensing fee shall be assessed in the month when~~
26 ~~the applicant is notified that the license has been approved.~~

1 ~~"(3) One hundred dollars (\$100) for~~ (2) For all
2 biennial ~~license~~ licenses or renewals postmarked or received
3 at the office of the board by the date in which the license
4 expires.

5 ~~"(4) Twenty five dollars (\$25) for~~ (3) For the
6 initial application for licensure ~~or the resubmission of the~~
7 ~~initial application.~~

8 ~~"(5) One hundred dollars (\$100) for~~ (4) For the
9 initial establishment license.

10 ~~"(6) Fifty dollars (\$50) for~~ (5) For the biennial
11 renewal of the establishment license.

12 ~~"(7) Fifty dollars (\$50) for the~~ (6) For initial
13 registration as a massage therapy school in this state.

14 ~~"(8) Ten dollars (\$10) to~~ (7) To renew the
15 registration as a massage therapy school.

16 ~~"(9) Ten dollars (\$10) to~~ (8) To register or renew
17 as a massage therapy instructor in this state. ~~This is a~~
18 one time fee and does not have to be renewed.

19 ~~"(10) Seventy five dollars (\$75) to~~ (9) To
20 reactivate an inactive license.

21 ~~"(11) Twenty five dollars (\$25) shall be added to~~
22 ~~all- license fees not~~ (10) For licenses not post-marked or
23 received by the board before the expiration date of the
24 license.

25 ~~"(12) Fifteen dollars (\$15) to verify~~ (11) For an
26 official, written verification of a license.

1 " ~~(13) Ten dollars~~ ~~—(\$10)~~ —for (12) For a duplicate
2 license certificate or a name change on a license certificate.
3 The board may issue a duplicate certificate only after
4 receiving a sworn letter from the massage therapist that the
5 original certificate was lost, stolen, or destroyed. The
6 records of the board shall reflect that a duplicate
7 certificate was issued.

8 "(b) Necessary administrative fees may be charged by
9 the board, including, but not limited to, reasonable costs for
10 copying, labels, and lists. Examination and license fees may
11 be adjusted as the board shall deem appropriate.

12 "(c) There is hereby established a separate special
13 revenue trust fund in the State Treasury to be known as the
14 Alabama Board of Massage Therapy Fund. All receipts collected
15 by the board under the provisions of this chapter are to be
16 deposited in this fund and used only to carry out the
17 provisions of this chapter. Such receipts shall be disbursed
18 only by warrant of the state Comptroller, upon itemized
19 vouchers approved by the chair of the board; provided that no
20 funds shall be withdrawn except as budgeted and allotted
21 according to the provisions of Sections 41-4-80 to 41-4-96,
22 inclusive, 41-19-1, and 41-19-12, as amended, and only in
23 amounts as stipulated in the general appropriations bill or
24 other appropriations bills.

25 "§34-43-15.

26 " (a) The board may suspend, revoke, or refuse to
27 issue or renew a license or and impose a civil penalty after

1 notice and opportunity for a hearing pursuant to the
2 Administrative Procedure Act, upon proof of any of the
3 following:

4 "(1) The license was obtained by means of fraud,
5 misrepresentation, or concealment of material facts, including
6 making a false statement on an application or any other
7 document required by the board for licensure.

8 "(2) The licensee sold or bartered or offered to
9 sell or barter a license for a massage therapist or a massage
10 therapy establishment.

11 "(3) The licensee has engaged in unprofessional
12 conduct that has endangered or is likely to endanger the
13 health, safety, and welfare of the public, as defined by the
14 rules of the board.

15 "(4) The licensee has been convicted of a felony or
16 of any crime arising out of or connected with the practice of
17 massage therapy.

18 "(5) The licensee has violated or aided and abetted
19 in the violation of this chapter.

20 "(6) The licensee is adjudicated as mentally
21 incompetent by a court of law.

22 "(7) The licensee uses controlled substances or
23 habitually and excessively uses alcohol.

24 "(8) The licensee engaged in false, deceptive, or
25 misleading advertising.

1 "(9) The licensee had a license revoked, suspended,
2 or denied in any other territory or jurisdiction of the United
3 States for any act described in this section.

4 "(10) The licensee is practicing or offering to
5 practice beyond the scope permitted by law or accepting and
6 performing professional responsibilities which the licensee
7 knows or has reason to know that she or he is not competent to
8 perform.

9 "(11) The licensee is delegating professional
10 responsibilities to a person when the licensee delegating such
11 responsibilities knows or has reason to know that such person
12 is not qualified by training, experience, or licensure to
13 perform.

14 "(12) The licensee is violating a lawful order of
15 the board previously entered in a disciplinary hearing or
16 failing to comply with a lawfully issued subpoena of the
17 board.

18 "(13) The licensee has failed to permit the board to
19 inspect the business premises of the licensee during regular
20 business hours.

21 "(14) The licensee is practicing massage at a site,
22 location, or place which is not duly licensed as a massage
23 establishment.

24 "(b) Any person who has been convicted of, or
25 entered a plea of nolo contendere to, a crime or offense
26 involving prostitution or other sexual offenses is ineligible
27 to hold a license as a massage therapist for a period of at

1 least three years after the entry of the conviction or plea.
2 The board retains the right to revoke a license indefinitely
3 if the licensee is proven guilty of a crime or of sexual
4 misconduct. Reinstatement of licensure is contingent upon
5 proof of weekly counseling by a licensed professional
6 counselor.

7 "(c) Any person who has been convicted of, or
8 entered a plea of nolo contendere to, an offense involving
9 prostitution or any other type of sexual offense may not

10 receive a license for a massage therapy establishment for a
11 period of three years after the date of conviction or entry of
12 the plea. The board shall revoke the establishment license of
13 any establishment which the board determines is a sexually
14 oriented business. The board may revoke an establishment
15 license if a person is convicted of, or enters a plea of nolo
16 contendere to, any crime involving prostitution or any other
17 sexual offense against a client which occurred on the premises
18 of the establishment.

19 "(d)(1) Upon finding a person, governed by this
20 chapter, performing massage therapy without having obtained a
21 license, the board may do any of the following:

22 "a. Impose an administrative fine of not more than
23 ten thousand dollars (\$10,000).

24 "b. Issue a cease and desist order.

25 "c. Petition the circuit court of the county where
26 the act occurred to enforce the cease and desist order and
27 collect the assessed fine.

1 "(2) Any person aggrieved by any adverse action of
2 the board must appeal the action to the Circuit Court of
3 Montgomery County in accordance with the Alabama
4 Administrative Procedure Act.

5 "§34-43-17.

6 "Any person who violates this chapter shall be
7 guilty of a Class C A misdemeanor."

8 Section 2. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.

Board Members

Alabama Board of Massage Therapy Board Members

Tammie Friedrichs, Chair
P.O. Box 462
Vinemont, AL 35179
Office: 256-739-3578
Email: tfriedrichs@bellsouth.net
Massage Therapist Position
Caucasian Female
Term: 4/12/05 – 9/30/08

Tommy W. O'Brien
5126 Orchard Lane
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Email: ttommyobrien@yahoo.com
Consumer Position (Resigned)
Caucasian Male
Term: 4/12/05 – 9/30/08

Arnold Askew
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Massage Therapist Position
Caucasian Male
Term: 12/21/01 – 9/30/05

B. Hal Richardson
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Email: halrichardson@msn.com
Massage Therapist Position
Caucasian Male
Term: 4/12/05 – 4/12/08

Cynthia Harris, Vice-Chair
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Columbiana, AL 35051
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Email: cjaw0311@aol.com
Massage Therapist Position
African American Female
Term: 12/21/01 – 9/30/05

April E. Henderson
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Email: aprilehenderson@hotmail.com
Massage Therapist Position
African-American Female
Term: 2/18/05 – 9/30/07

Judy K. White
Post Office Box 996
Cullman, AL 35056-0996
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Fax: 256-734-8500
Consumer Position
Caucasian Female
Term: 4/9/01 – 9/30/04

Keith E. Warren
Executive Director
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Agency Response to Significant Items



ALABAMA BOARD OF MASSAGE THERAPY

610 S. McDonough Street
Montgomery, AL 36104
334-269-9990
334-263-6115 fax

June 12, 2007

John Norris
Director, Operational Division
State of Alabama
Department of Examiners of Public Accounts
Post Office Box 302251
Montgomery, AL 36130-2251

Dear Mr. Norris:

Attached are responses to each of the significant items identified by the Department of Public Accounts submitted in the Department's letter dated May 31, 2008. The State Board of Massage Therapy understands these significant items will appear in the Department's report to the Sunset Committee. We hope that this response provides sufficient information. Thank you for your assistance and cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith E. Warren", with a long, sweeping horizontal line extending to the right.

Keith E. Warren
Executive Director

Responses to Significant Items

1. Board members do not believe the Board is adequately staffed.

Response: The Board's intention to this question was regarding Board members that are not currently serving. There are seven members on this Board and only five are active members. The two consumer positions are currently vacant. Due to many schedules, the Board struggles maintain a quorum and often only meeting with the minimum of four members present. The Governor's Office has been made aware of the two consumer vacancies and as of this date, no appointments have been made.

2. Board members stated that lack of current appointments to the board is impeding the board's functioning.

Response: The Board desperately needs appointments from the Governor's Office and will continue to correspond with the appropriate contact to express the Board's needs.

3. The board's offices were closed in observance of Good Friday, which is not a state holiday.

Response: Warren & Company, Inc. has observed Good Friday as a holiday since its inception in 1997. This matter will be addressed and corrected in the future.

4. Legislation proposed in the 2007 Regular Legislative Session makes the following changes to the massage licensing law.

Response: The Board has tried to pass this legislation for several years. The Board will continue to introduce this legislation until it is successful in its passage. There are many changes pertaining to licensing fees, adds additional authority over licensees of the Board pertaining to violations of the law, adds additional requirements for initial licensing, and deletes language not necessary to conduct business. The Board drafted the legislation and fully supports this legislation.

Status of Prior Findings

1. Board Members do not believe the board is adequately funded.

Response: The Board was successful in collecting a \$10,000 fine from a case that has been pending since 2003. The Board also introduced legislation to allow the Board discretion to establish fees through the Administrative Rule making process. However, this legislation was unsuccessful but will be introduced again in the next legislative session.

2. A provision in the Board's licensing law (Code of Alabama 1975, Section 34-43-9(2)(c)) which requires that applicants for licensure must be United States citizens may be unconstitutional.

Response: This has been a significant item for several years and the Board has made several attempts legislatively to correct this matter. The Board will continue in its efforts to include this matter in its legislation.

3. Licensee Files contained errors in or omissions of documentation showing compliance with the massage therapy licensing law.

Response: The Board has made extensive efforts to correct this matter. All information required is collected on the initial application, along with all required documentation. The instructor application was overlooked from adding the social security number requirement since this is an initial license and is non-renewing. The social security number requirement has been added to the application and the updated application has been uploaded on the Board's web site.

The Board will continue to seek removing the Department of Education licensing requirement for massage therapy schools due to the fact that private schools can be exempt from the licensing requirements from the Department of Education if there is a regulatory Board that provides for licensure schools of that profession. The Board does have provisions and issues licenses to massage therapy schools over a massage therapy program to students in the state.

4. The board has promulgated rules which conflict with Alabama law and has implemented application forms without regard to the Alabama Administrative Procedure Act.

Response: The Board did fail to correct the quorum in the administrative rules that were filed through the Legislative Reference Service; however, will correct this matter during the next rule change of the Board. This was a mere oversight.

5. Complainants are not satisfied with the board's efforts to resolve complaints.

Response: The Executive Director mails acknowledgements of complaints once they are received in the office and also forwards the outcome of the complaint to the complainant. In some cases, the complaint is not validated to constitute a violation of the massage therapy law. Complainants feel that the Board should be able to discipline someone (licensee or non-licensee) without regard to whether a violation of the law exists or not. In a response to a complaint that does not constitute a violation, the letter just states that the complaint could not be validated and has been closed. This is a response that is highly common among regulatory Boards. However, if the committee feels further explanation is needed then we can definitely provide more detail.

The responses regarding the Board not doing everything it could, is quite common. The Board does exhaust every possibility in within the boundaries of the massage therapy law to act upon complaints. The Board has introduced legislation to increase it's authority over certain aspects of its licensees and non-licensees. The Board does not have the authority to issue cease and desist orders nor does it have the authority to physically close any establishment. The

Board does work in conjunction with local authorities regarding businesses that are not properly licensed or providing services prohibited by the massage therapy law.

The Executive Director responds to all complainants in every aspect. There would need to be specifics provided regarding a response to the knowledge and courtesy of the responses issued by the executive director. Courtesy is extended to everyone in all correspondence from the Board.

6. The term length of the most recently appointed board member does not meet the requirements of the board's enabling statutes.

Response: The Executive Director will continue correspondence with the Governor's Office to have this term corrected to meet the requirements of the enabling statutes.